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ABSTRACT

The report of first-year problems and potential solutions, based on a study of legal issues which arose in the development of employer based career education (EBCE) programs, is presented as a working draft from which certain policy questions and priority issues may be delineated. Federal statutes and the statutes of Pennsylvania, West Virginia, California and Oregon, where EBCE programs are in operation, were researched, and issues are confined to only those of reasonable importance to current projects. Five chapters examine public versus private school sponsorship; financing; forming a career education program (compulsory education, licensing and accreditation, curriculum requirements, course requirements and choices, students' rights and responsibilities, student protection, employer liability, transportation, teacher certification and responsibilities); labor issues in EBCE programs--the student's status on an employer site; experiences with legal issues of current EBCE programs (including organization patterns, workman's compensation, student reimbursement, child labor laws, curriculum, physical facilities, school lunch, and student records. A summary and conclusions are presented in chapter 6. A summary of compulsory attendance regulations and the Far West Laboratory Agreement with Oakland Schools are appended. (NH)

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Legal Issues in Experience Based Career Education

by Arnold Rehmann, Ph.D.

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INTRODUCTION

A study of legal issues which arose in the development of employer based career education (EBCE) programs was approved as a component of ARIES' contract (OEC-0-72-5240) with NIE in April, 1973. The project was intended to first examine the legal issues which arose during the first year of operation of the Model II EBCE projects and to report on ways potential developers could address and resolve legal questions as they planned and implemented new EBCE programs. Following this report of first year problems and potential solutions, ARIES will develop a brief guidebook which lists key questions and issues that future developers of EBCE programs should examine. The first report is presented as a working draft from which certain policy questions and priority issues may be delineated. This report is, therefore, an internal working document the value of which lies in its exposition of issues from which a guidebook may evolve.

In order to deal with the many issues of a legal and regulatory nature arising during the first year of Model II operations, it was necessary to focus research on federal statutes and on the statutes of the four states (Pennsylvania, West Virginia, California, Oregon) where Model II programs are in operation. Further, the issues had to be narrowed to include only those of reasonable importance to current projects. Despite those limitations, state codes and statutes, administrative regulations, and guidelines are voluminous to the extent that nearly every issue discussed herein could provide ample information for a single report of comparable length and requiring extensive research. A discussion of these issues to provide information for EBCE developers throughout the nation might well include an examination of statutory variations among the states. This was not possible. Instead, we have attempted to use examples which may be more broadly applicable from federal law and the statutes of the four states.

Though case law is cited in this draft as exemplary of solutions to legal questions in educational settings, no claim is made that the citations are applicable in a specific legal test. Further, ARIES disclaims any attempt to offer legal advice to the Career Education Program through the research, citations, and discussion included herein. The report, which has been examined and critiqued by educational and legal specialists, represents an analysis of EBCE legal issues and solutions without holding that the courses of action followed or suggested would carry the force of law in any future test of comparable legal proceedings.

Citations of case law throughout the report follow the standard citation forms used in Corpus Juris Secundum and American Jurisprudence, both legal encyclopedias. In addition, the report cites state codes and has drawn from the U.S. Code Annotated for material regarding federal laws. It should be noted that there is a paucity of material regarding students in work experience programs. The result is that research had to focus on both child labor and educational laws in an attempt to determine appropriate applications to a work experience program which includes student participation in both educational and employment settings.

Finally, we should note that the acronym EBCE itself has been changed during the course of our study to mean "Experience Based Career Education". The substance of the report is unaffected by the change, though the discussion related to private vs. public school sponsorship is of reduced importance. The current meaning of the acronym focuses less on the locus of control and more on the nature of the program offered. Experience based programs imply a higher concern with the type of education a student receives without limiting its control or sponsorship to either the private or public sector. Our discussion raises pertinent issues, advantages, and disadvantages of private sector sponsorship, though neither public nor private control should be excluded as an organizational strategy.

Chapter I

PUBLIC VS. PRIVATE SCHOOL SPONSORSHIP

A. Introduction

In the early conceptualization and design of the Employer (now Experience) Based Career Education model, it was anticipated that employers, individually or as a consortium, would sponsor and govern career education programs. It was believed that employers had facilities at which work exploration and training could be pursued. In addition it was felt that some facilities could be used for teaching various academic subjects and basic skills just as in most schools. While this plan bore resemblance to some existing school programs, its major difference was in the governance structure. As employers sponsored, planned, and operated such a program, they would be running what was essentially a private school, independent of public school jurisdiction.

Private school sponsorship had legal advantages and disadvantages that will be briefly discussed. It should be noted, however, that the private school governance concept for EBCE has never been fully tested. Employers have not contributed funds directly to the operation of any EBCE program, though they have given support, encouragement, and direct help through "in kind" assistance. Employer representatives have served on advisory boards and have assisted in the instructional process as it related to various job areas and work experiences. They have seemed reluctant to fully support a career education program for several possible reasons.

- The benefits derived for the employer may not be commensurate with the costs of program operation.
- Employers currently have no direct way to recover any funds from the state to cover basic educational costs which public schools receive.
- Employers feel well-qualified to teach about their enterprise, but are generally not equipped to provide basic academic instruction.

B. Locus of Control

We have noted above that central to the question of employer governance are two issues --locus of control and financing. The latter will be addressed separately in the next section of this paper. Control of schools has traditionally been viewed as an obligation of the states and state legislators have primary authority to create or provide for the establishment of districts of various kinds and for differing purposes.[1] Legislatures may enlarge, consolidate, or dissolve school districts, though they may delegate such authority to subordinate administrative bodies.[2] Once established, school districts can only be altered in their basic character by other action of the legislature.[3] The reason

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1. Regional High School District No. 3 v. Town of Newtown, 59 A2d 527, 134 Conn. 613. Eden Tp. School District v. Fisher, Com. Pl., 52 Lanc. Rev. 239. 56 C.J. p 255 notes 30-35.
2. Sunnywood Common School Dist. v. County Board of Education, 81 SD 110, 131 NW2d 105. Hazlet v. Gaunt, 126 Colo. 385, 250 P2d 188.
3. State v. French, 208 p 664, 111 Kan. 820. Barrett v. Haas, Com. Pl., 62 Dauph. 118. Tilton v. Dayton Independent School Dist., Civ. App., 2 S.W.2d 889.

for classifying school districts by cities, counties, or other jurisdictional boundary was to allow different rights, powers, and liabilities to the different classes.[1] For example, the powers of school districts in cities of the first class will differ from small districts, from county districts, and other special or independent districts in such matters as taxing power, indebtedness and bonding limitations, teacher benefit plans, etc. It is, however, the responsibility of state legislators to exercise these powers and to determine the authority which shall be vested in local educational agencies.

Employers traditionally have not viewed themselves in the role of educating people, only of training them in job-related activities. It would be within the power of a state legislature to create a separate, special school district within an existing district or districts for the purposes of operating a specific type of school with a defined set of responsibilities.[2] Examples of such special districts include intermediate or regional special education districts, vocational-technical school districts, and area-wide educational service agencies. In the case of creation of a special unit to provide a career education program, the legislature would have such power only if they did not grant a license and permission to operate a private school program to corporations or other private enterprise. Under a constitutional

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1. Conover v. Board of Education of Nebo School Dist., 175 P.2d 209, 110 Utah 454, rehearing denied 186 p.2d 588, 112 Utah 219.
2. Engle v. Reichard, 4 Pa. Co. 48.

provision requiring schools to be free from sectarian or private control, the term "control" was determined to be the act or fact of controlling; power or authority to control; directing or restraining domination.[1] Public access and opportunity for control would have to exist, and such a career education program would neither be employer governed nor would it meet the test of being independent of a state educational structure. The alternative remaining for an employer controlled EBCE program would likely be as a private school.

C. Private Schools --Their Authority and Control

Private schools are generally defined as places, organizations, or endeavors attendance at which would satisfy compulsory school attendance laws. The location of such a school or its physical facilities must allow for governmental supervision. Home instruction has ordinarily been rejected as a private school, in part because of such regulatory problems.[2] Thus, a private school must provide an instructional sequence that satisfies state requirements for compulsory attendance and is accessible to governmental regulation. It follows that authority to operate a private school derives from the state similarly to what was observed in public schools.

Control of the private school is quite another matter. A board of education, its designated administrative executive, or individuals who provide regularly scheduled instruction may legally control a private school. Other than the need to be recognized as an educational program or separate educational entity with regular hours of operation, the state does not exercise regular supervisory control. EBCE programs formed by employers and providing a regular course of instruction would likely qualify in most states as a private school.

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[1] Gerhardt v. Heid, 267 N.W. 127, 66 N.D. 444.

[2] People v. Turner, 121 Cal App 2d Supp 861, 263 P2d 685, app dismd 347 US 972, 98 L Ed 1112, 74 S Ct 785; State v. Hoyt, 84 NH 38, 146 A 170.

Procedures for obtaining a private school license vary from state to state but usually are intended to specify the fields of instruction to be offered, location of services, the number of participants to be enrolled, qualifications of staff, and resources available to equip and maintain the school. Some states require an admissions policy for private schools which allows equal access regardless of race or religion. Additionally, most states require a surety bond to protect the contractual rights of students.

D. Advantages of Private School Organizational Pattern

It has been held that private schools may have teachers who are not certified.[1] The more important concern, in the view of the state, was that instruction was given generally in the same subjects and for the same duration as required of public schools. An EBCE program could probably utilize company employees and non-certified persons in the conduct of its instruction and in work experience supervision.

Private schools may be operated on employer sites and in areas not otherwise zoned for commercial purposes.[2] But if the school is conducted improperly or is in a locality where heavy traffic or unusual noise creates a problem to other residents or neighbors, it could be enjoined from operating.[1] Legislative authority for specifying educational programs and determining financing limits with regard to public schools, is limited in private schools to the preservation of public safety, health, and morals.[2] A Kentucky court held that unless a private school is a direct threat to safety, health, or morals, neither the state nor the voters may prohibit its establishment.[3]

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[1] State v. Peterman, 32 Ind App 665, 70 NE 550.

[2] Tonnelle v. Hayes, 118 Misc 339, 194 NYS 181.

While the state may require that certain areas of instruction are covered and that classes meet on a specified schedule, private schools generally have fewer academic requirements. This permits greater latitude in programming and allows for special instruction in areas related to the purposes of the private school. Special vocational or religious classes are examples of courses that may not be available or offered by a public school. Wider latitude in programming is especially helpful to innovative, experimental programs which are attempting to promote or research new educational ideas.

One of the major advantages of a private school organizational pattern in an EBCE program is the extensive power of private schools to make contracts. Unlike the constraints placed on public schools, it is possible for private schools to make contracts and assume indebtedness levels in excess of those permitted for public schools. If facilities require modification or if new buildings or property is needed, private schools can contract for such work or property without being subject to state school regulation. In doing so they

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1. Appeal of Ladies' Decorative Art Club (Pa) 10 Sadler 150, 13 A 537.
2. Montpelier Academy v. George, 14 La 39.
3. Columbia Trust Co. v. Lincoln Institute, 139 Ky 804, 129 SW 113.

are not limited as are public schools in the amount of indebtedness they may incur. As a private entity, they assume liability for their contractual obligations much as a private corporation or individual does.

Private schools are usually not insurers of the safety of students and generally do not stand *in loco parentis* with respect to students, but they must exercise ordinary safety care. The *in loco parentis* concept accounts for many restrictions on student behavior and has been used as the basis for a variety of suits against public school officials and school districts. The advantage to private schools is particularly pertinent in the case of boarding or residential schools where students are present in school facilities on a full-time basis. If a student were injured, for example, in a scuffle with another student, and where such conduct could not reasonably be foreseen, the school would not be held responsible. This is not to say that private schools and their employees must not exercise care in performance of assigned duties. Individual staff members, charged with student supervision, may be held responsible and liable for personal injuries, as may public school teachers.

E. Disadvantages of Private School Organizational Plan

Most schools wishing to offer educational services over a long period of time eventually seek some form of accreditation. Usually such accrediting is done by independent organizations which require successful operation of one or more years before the school may apply for accreditation. Often they require the completion of one "graduating" class before accreditation is given. Evaluation and examination of a school seeking accreditation are costly and time-consuming. They may not be highly important to a private school attempting an experimental research and development program, but may be crucial to students who want assurances that the educational program prepares and makes them eligible for entry into the job market, colleges, or other advanced training programs. From an accreditation aspect, private school EBCE organization is cumbersome. However, if the program were to be developed or fostered by an already accredited school, student eligibility for advanced schooling would not be in question.

The major disadvantage of private school sponsorship of EBCE programs is funding. Each of the present EBCE Model II programs mentioned funding as a key issue in future implementation of the model, even though each of them is federally funded and has no immediate need to seek alternative resources. Staffs of each of the labs expressed concern that the private sector seemed unready and its resources not available for development of new EBCE programs. Funding is a disadvantage which alone may outweigh the several advantages of private school organization cited above, and represents an important reason why EBCE programs may eventually have to be organized under the aegis of the public schools. Because of the importance of this issue, it is treated separately in the next section.

Chapter II

FINANCING

A. Introduction

Benjamin Willis, former superintendent of the Chicago Public Schools, once commented that the only real board of education in any state is the state legislature. He was referring, of course, to the regulatory power vested in the state to establish and limit taxing authority of local education agencies. The financial maintenance of schools in every state is the responsibility of the state and not of local or municipal governments. Within constitutional limits, the state has the power of control over school funds and the manner in which school systems are financed.[1] Willis' position was that as state funding increases so does real state control. A similar situation exists in any educational system, for from wherever the money comes, there rests the control of the school.

To date in EBCE programs, that funding source (and hence, the locus of control) has been the federal government (first the Office of Education, later the National Institute of Education). Though non-profit regional educational laboratories administer each of four programs with the guidance of local governing boards and advisory councils, program services are ultimately decided by the amount of federal funding. These experimental model programs have each developed affiliations with employers and with local school systems, neither of which directly participate in program funding. We noted in Chapter 1 several reasons why employers may not find it economically feasible to fund and conduct EBCE programs. Public school districts through the financing authority vested in them by the state appear most able, under current laws, to establish and obtain long-range funding to operate career education work experience programs similar to the EBCE model. In the following sections we will examine school finance legal bases for this position.

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[1] Wilmore v. Annear, 65 P.2d 1433, 100 Colo. 106.

B. Public School Districts Appear Most Able ...

In the past five years a number of state legislatures passed laws which were designed to provide public funds to non-public schools. Pennsylvania was among the first, and its declaration of legislative policy details the several arguments of supporters of aid to non-public schools.[1] The premises were as follows:

1. Intellectual and cultural resources are prime national assets, but the growing population and attendant rising educational costs have created a mounting financial crisis within the state.
2. Non-public education facilities educate more than one-fifth of all elementary and secondary age pupils.
3. The education provided by non-public facilities is recognized as a public welfare service which the state has a governmental duty to support.
4. It is a fundamental parental liberty and basic right to choose a non-public education facility for a child.
5. The state, in fulfilling its duties, has a right to purchase needed services, whether from public or non-public, sectarian or non-sectarian organizations.

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[1] Pennsylvania Education Statutes, Chapter 23, Section 5602.

6. An intolerable financial burden would result for the state if a majority of parents moved children from non-public to public schools. Therefore the state should purchase secular educational services from non-public schools to avoid school stoppages and impairment of education.

Based on this policy statement, Pennsylvania developed and passed two laws to provide aid to nonpublic schools. The first act in 1968, called the Nonpublic Elementary and Secondary Education Act, allowed for the state to purchase from nonpublic schools secular education courses consisting of mathematics, modern foreign languages, physical science, and physical education. Special funding was designated and the act was to be administered by the state's Secretary of Education. Subsequent court test of the law led to it being declared unconstitutional by the U.S. Supreme Court.[1]

The Pennsylvania legislature next passed in August, 1971, the Parent Reimbursement Act for Nonpublic Education. The act provided for tuition payments to parents whose children had completed the school year in a nonpublic school. Tuition reimbursement was set at $75 per year for an elementary age child and $150 per year for a child of secondary age. This law was contested and was struck down by a federal court. An appeal to the U.S. Supreme Court failed to change the lower court decision and tuition reimbursements were declared unconstitutional.[2] The court has also held that tax deductions for parents of children attending nonpublic schools were not constitutional.[3]

1. Lemon v. Kurtzman, 310 F.Supp. 35, D.C. 1969 and Lemon v. Kurtsman, 91 S.Ct. 2105, 403 U.S. 602, 29 L.Ed. 745 (1971), rehearing denied 92 S.Ct. 24, 404 U.S. 876, 30 L.Ed. 2d 123 on remand 348 F.Supp.300.
2. Lemon v. Sloan, 340 F. Supp. 1356, D.C. 1972.
3. Committee for Public Education v. Nyquist, 93 S.Ct. 2955.

The latter plan had been adopted by several states including New York, Minnesota, and Ohio.

The effects of this recent series of rulings make it quite clear that most forms of state aid to nonpublic schools are likely to fail, since it is felt that such aid advances religion by subsidizing religious activities of sectarian elementary and secondary schools. It has not been determined to date whether a form of state aid to nonpublic schools could be implemented if it could be shown conclusively that no sectarian religious activities were even remotely associated with the nonpublic school. The legislative interest to date has clearly been directed at finding a means to subsidize sectarian schools which constitute the vast majority of nonpublic school facilities. While a career education employer supported program may be completely separated from an advancement of religion, recent court decisions suggest that it may be difficult to interest legislatures in new laws that would allow nonpublic school funding. There is, however, precedent to suggest that it may be possible to legally fund a nonsectarian private school. It has been held that an act authorizing public aid to private institutions for the education of "exceptional children" was not in violation of the Kentucky state constitution.[1]

1. Butler v. United Cerebral Palsy, Inc. (Ky) 352 SW2d 203, the court holding that under the state constitution the act had a valid public purpose, since although the financial aid provided went directly to the school the ultimate beneficiary was the "exceptional" child; and the court further holding that the act was not violative of a state constitutional provision prohibiting the expenditure of public money for nonpublic schools, since the act was primarily a welfare rather than an educational measure, the court saying that it was not the intention of the delegates in adopting the constitution to deny forever the possibility of special educational assistance to those who by no choice of their own are unsuited to the standard program and facilities of the common-school system.

It has been argued that this same principle might be applied in a nonsectarian career education program.

A private school setting offering nonsectarian career education appears to have some similarities to private special education institutions. But there is one significant difference. Students who receive special education training are a unique classification who are identified as medically, psychologically, and/or educationally handicapped. The classificatory system or labeling which pronounces such children as "exceptional" was used in Butler[1] as a basis for declaring financial aid to them as a welfare rather than educational measure. The parallel situation for public support of children in private career education programs may require that participants be placed in a special category of need and that the purposes of such classification not be primarily educational. Such a possibility seems to be contrary to the philosophy of career education as a service to all children, not to a selected few.

Another potential method for public funding of private career education programs relates to the current experiments with voucher systems. In such a system, a basic allotment for education goes to parents who may then select the school which the child attends. Thus far, however, such experiments have been of limited number and scope. A principal example has been the federally funded Alum Rock (California) voucher program. Two characteristics limit the

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1. Butler v. United Cerebral Palsy, Inc., op.cit.

broader applicability of this program to other settings. (1) Federal funds are supporting the program which has been approved as a special experiment by the state. No special state funds are involved. (2) Parents may make choices, but they are usually within the public school sphere.[1]

Recently Connecticut passed legislation allowing six experimental voucher programs in the state. Those programs will allow parents to choose schools within the private sector, but the test is a limited one for experimental and demonstration purposes only. Whether the voucher model is successful has yet to be determined, and the possibility exists for a court test of its legality.

It should be stressed that all public funding of education is determined by state legislatures which promulgate laws to regulate school financing. In order to obtain a variance allowing public funds to be expended for a private career education program, special legislative action would be required in each of the states. If that were accomplished, the resulting statutes would likely be subjected to a court test of their legality. The difficulties in obtaining and sustaining special legislation to benefit and accommodate public funding of private career education programs appear to be substantial.

C. ...Through the Financing Authority Vested in Them ...

We stated earlier that states control public education by their power over the purse strings. Not only do states levy and collect taxes which are returned in the form of aids to public schools, but they also limit how much local districts collect, usually through property taxes. Yet the property tax, which is combined with state aids to constitute 90 percent or more of the funding of most public schools, remains one of the least popular of all taxes paid by Americans. In one survey 45% of the sample regarded the local property tax as the worst, least fair levy, while 19% named the federal income tax, 13% the state income tax, and 13% the state sales tax. As a result of this distaste and the inequities it is felt have arisen through property tax funding of public schools, a series of challenges has been directed at changing school funding procedures.

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[1] California enacted legislation (SB-600, April 3, 1973) which will permit private schools to participate in the voucher demonstration. However, the legislation stipulates that participating private schools must be under the exclusive control of the public school board for the duration of such participation.

In Serrano vs. Priest,[1] the California Supreme Court found that tax levies which provide "wealthy" school districts with ample funds at a comparatively small cost per taxpayer while "poor" district taxpayers paid higher property tax rates were in violation of the U.S. Constitution. Similarly in Rodriguez vs. San Antonio School District,[2] the Texas Supreme Court and lower federal courts held that the Texas scheme for financing education, based largely on a tax on real property, was a violation of the equal protection clause of the Fourteenth Amendment to the U.S. Constitution. However, the case was appealed to the U.S. Supreme Court which overturned the lower court rulings on March 21, 1973. The Supreme Court majority, on a 5-4 vote, held that the Texas law did not establish

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1. Serrano v. Priest, 96 Cal. Rptr. 601; 487 P. 2d 1241; 5 Cal. 3d 584 (1971).
2. Rodriguez v. San Antonio Independent School District, 337 F. Supp 280 (WD Tex. 1971).

a special classificatory system for school funding based on wealth. Further, the state's action did not touch on a fundamental interest since education was not a basic right guaranteed by the Constitution. The court concluded that the Texas way of financing education used methods consistent with state purposes, and were constitutional. The results of the Texas law, which allowed local districts to raise money beyond state aid and for interdistrict inequalities to arise, were not considered evidences of discriminatory practices by the state.

Other states have experienced similar challenges[1] and the most common outcomes closely resemble the Serrano ruling. But the courts have tended to sustain, or suspend execution of an order to change existing laws. Instead they have urged legislative action to remedy the inequities in present school funding patterns.

Several solutions have been proposed to reduce or eliminate the inequities of school financing. All of the systems include some form of tax redistribution, but perhaps the most prevalent proposal is James Conant's suggestion that elementary and secondary education be fully funded from state resources rather than the present combination of state funds and local property taxes. Under this plan, states would be responsible for substantially all of the nonfederal outlays to support schools. The President's Commission on School Finance[2] supported this concept and

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1. For example, Van Dusartz vs. Hatfield, U.S. District Court, Minnesota, 1971. Robinson vs. Cahill, Superior Court of New Jersey.
2. Schools, People, and Money: The Need for Educational Reform. The President's Commission on School Finance, Final Report, 1972.

recommended that local supplements not be allowed to exceed 10 percent of the state allocation. The role of the federal government was recommended to be limited to providing leadership in long-range educational policy, with only a supplementary role to the states in providing school capital and operating costs.

The effect of recent litigation on future career education programs has, of course, not yet been determined. Added state control of funding seems likely to increase state influence on school operations, including special and innovative programs. Because employer based career education programs almost certainly require new expenditures of public funds, it seems evident that there will have to be support both financially and conceptually by the states. Any attempt to promote an EBCE model at the local district level may be frustrated by the state's growing role in financing and the limitations inherent when one or more federal agencies attempt to inform and provide orientation to the thousands of local districts in the nation.

D. ...To Establish and Operate Career Education Programs Similar to the EBCE Model

The legal issues related to financing have led us to suggest that career education programs, and specifically the EBCE model, will be difficult to finance outside the jurisdiction of public schools. While a precedent exists for funding non-sectarian private schools, we believe that the chances for such legislation to be passed specifically to assist private EBCE programs are remote. Thus, we support the position that development be encouraged within public schools.

Secondly, we reviewed current litigation that is directed at decreasing inequities in school expenditures through full (or fuller) state funding. As the proportion of state aid to public schools increases relative to local property tax expenditures, the locus of control of schools may shift increasingly to the state. Implementation of new programs must be accompanied by commitments of new moneys. For the states to support EBCE programs, they will need to become conceptually committed to an EBCE model as an alternative secondary education program. One method of accomplishing this end would be to utilize present model programs for visitations by state personnel from throughout four designated regions. Another strategy for marketing the EBCE concept would use present developers to lead workshops and seminars on the model for state curriculum leaders. Supporting and promoting the concept at the state level is recommended over attempts to encourage EBCE programs at the local district level.

Chapter III

FORMING A CAREER EDUCATION PROGRAM

There is wide variation in the form which career education programs may take, but there are several common concerns which must be addressed regardless of the organizational plan. In this section, we intend to examine some organizational issues which affect or influence the planning of new programs.

A. General Administrative Issues

1. Compulsory Education

Compulsory education statutes have become very general in the United States and their constitutionality seems beyond dispute. The purpose of such laws is to ensure that children are trained in matters related to good citizenship, patriotism and loyalty to the state. Since such laws are a means of protecting the public welfare, it has been held that a parent has an obligation to the state as well as to the child.[1] Further, the rights of parents in custody and control of children are subordinate to the power of the state and may be restricted or regulated by state or municipal law.[2]

Parents or persons having custody and control of children of specified school ages are under legal requirement to enter children in school during the required period.[1] Usually those ages are determined in the statutes of each state, with the most common specified age ranges being six or seven through sixteen.

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[1] Meyer v. Nebraska, 262 U.S. 390, 67 L Ed 1042, 43 S Ct 625, 29 ALR 1446; State v. Bailey, 157 Ind. 324, 61 NE 730.

[2] State v. Garber, 197 Kan. 567, 419 P2d 896, app dismd and cert den 389 U.S. 51, 19 L Ed 2d 50, 88 S Ct 236; Commonwealth v. Bey, 166 Pa Super 136, 70 A2d 693; Rice v. Commonwealth, 188 Va. 224, 49 SE2d 342, 3 ALR2d 1392.

A most comprehensive survey of state school attendance laws was developed by Umbeck[2] in which she not only reviewed compulsory attendance ages, but also examined statutes related to employment permits, school census, child labor. Since that 1960 study, at least six changes in compulsory school attendance ages have been enacted. They are:

Colorado	8-16	Changed	to	7-16
Maine	7-16	"	"	7-17
New Jersey	7-16	"	"	6-16
Puerto Rico	8-14	"	"	8-16
Texas	7-16	"	"	7-17
Wyoming	7-16	"	"	7-17

Umbeck's summary of these regulations (Appendix A, P 116) includes review of attendance statutes of the 50 states, Puerto Rico, and the District of Columbia. A subsequent review of state compulsory attendance laws by Steinhilber and Sokolowski[3] also provides an excellent resource for an EBCE developer who is concerned with satisfying the legal codes of his state.

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1. Some erosion in the general legal position of compulsory attendance laws is exemplified in the case of Wisconsin v. Yoder, 406 U.S. 205. In this case the U.S. Supreme Court held that the compulsory attendance law was in violation of the First Amendment rights of Amish whose religion required them to withdraw their children from school upon completion of the 8th grade.
2. Umbeck, Nelda. State legislation on school attendance and related matters -- school census and child labor. U.S. Office of Education, Legislative Services Branch, 1960.
3. Steinhilber, A.W., and Sokolowski, C.J. State law on compulsory education. U.S. Office of Education, OW-23044, Circular No. 793, 1966.

Compulsory attendance laws are of significant concern in developing new and separate programs such as career education whether in a public or private school setting. Without their existence, any program of instruction could be developed without concern for conflict with curricular or course requirements of the state. Further, students could enter the program at any age, regardless of curricular content, and participate in at least the formal classroom or training sessions that were offered.. The effect of such laws, however, requires that new programs give careful attention to state statutes and requirements so that the program will satisfy attendance requirements for school age children. It could be argued that programs could focus only on children past the regular state required ages, but that would be contrary to the prevailing philosophy which suggests that in varying ways career education should be extended to children throughout the school age range.

Compliance with compulsory education guidelines does not determine the form which a career education program may take. Among the settings in which school programs may operate are a wide range of private, single-purpose schools, private tutoring, and home study. The adequacy of any form which a career education program adopts will have to be decided in accordance with state or local law and often on the merits of the specific program. If the state refuses to approve a particular program, a Massachusetts court held it is the parent's responsibility to prove the child is receiving sufficient and proper instruction.[1]

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1. Commonwealth v. Roberts, 159 Mass 372, 34 NE 402.

Gibson[1] has argued that all other school related considerations ultimately hinge upon compulsory attendance laws. Those laws place the state in the position of mandating attendance and impose the further requirement that certain standards of content and performance be established to ensure and guarantee the rights of minors who are subjected under the law to attend a school. It is suggested that all career education programs fall within the purview of state education laws and must be organized in accordance with such statutes. Without adherence to this position, programs could fail to provide proper guarantees to students, public confidence would be eroded, and program continuation could be jeopardized.

2. Licensing and Accreditation

In order for schools to satisfy licensing requirements in each state, they must meet the criteria set out in the school codes of that state. A license, which is only a permit to operate, does not ensure capability on the part of the offeror to provide education of any given quality. Determination of the competency, thoroughness, and sufficiency of the entire instructional process is usually the result of careful examination of the staff, course offerings, and educational policies and procedures of individual schools. The process of reviewing the capabilities of a school and the subsequent certifying of the school in accordance with prescribed standards is often accomplished by accrediting agencies. In the case of public schools, there are six regional groups which jointly comprise the National Study of Secondary School Evaluation and all public schools seeking accreditation work through one of the regional associations.[1]

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[1] John Gibson, Legal Consultant for Far West Laboratory, Interview, June, 1973.

Licensing is a more direct and immediate legal concern to new programs which operate within a private setting. Very often licenses are granted for the purpose of establishing specific kinds of schools such as business, vocational, and trade schools. When operating in a private setting, it ultimately becomes a concern for special purpose schools that they not only conform to state education codes, but also that they be recognized as valid diploma granting institutions with appropriate accreditation. The establishment of such credentials are vital to the long term recognition and operation of an educational enterprise. It is our opinion that for career education programs operating within a public school setting accreditation is a moot issue. If functioning as an independent operation, it would be necessary to seek accreditation from one of several private school accrediting agencies. But if operating as a single program within a much larger public school system, the career education function would be accredited as a component of its parent organization.

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1. They are: New England Association of Colleges and Secondary Schools, Inc.; Middles States Association of Colleges and Secondary Schools; Southern Association of Colleges and Schools; North Central Association of Colleges and Secondary Schools; Northwest Association of Secondary and Higher Schools; Western Association of Schools and Colleges.

3. Curriculum Requirements

Along with its fundamental power to require schooling, the state maintains the authority to select the system of instruction and course of study to be pursued.[1] Practically, the determination of a course of study is delegated to local education agencies (LEAs) under general guidelines and rules established by the state. Local control of curriculum has been an expedient rather than a legal right. In this process of delegating curriculum control, the local board has complete authority to determine what courses shall be given, continued, or discontinued and this right cannot be interferred with or controlled by any court, unless such instruction is inimical to the public welfare.[2] The power to delegate such authority to local boards has been sustained several times[3] and allows for local officials to exercise discretion in the interpretation of guidelines which are usually quite comprehensive, though general.[4] Federal and state courts do not have the power to make curricular prescriptions. They can only adjudicate cases brought to them concerning specific offerings, and decisions of a state court are only binding in that state. Where federal constitutional rights are involved, the courts may order school boards to modify curriculum; for example, to offer athletic programs to female students or to provide programs for handicapped students.

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[1] Associated Schools v. School Dist. 122 Minn 254, 142 NW 325; Posey v. Board of Education, 199 NC 306, 154 SE 393, 70 ALR 1306; Mumme v. Marrs, 120 Tex 383, 40 SW2d 31.

[2] Love, F.P. An analysis of the litigation concerning courses of study within the public school curriculum with recommendations for handling subjects that are controversial. Unpublished doctoral dissertation. University of Pennsylvania, 1970.

[3] State ex rel. Andrew v. Webber, 108 Ind 31, 8 NE 708; Posey v. Board of Education, 199 NC 306, 154 SE 393, 70 ALR 1306; Mootz v. Belyea, 60 ND 741, 236 NW 358, 75 ALR 1347.

[4] State ex rel. Andrew v. Webber, 108 Ind 31, 8 NE 708; State Tax Commission v. Board of Education, 146 Kan 722 73 P2d 49, 115

Local districts have considerable freedom to determine curriculum over the minimum requirements determined by statute. In addition to offering courses in common subject areas such as language arts, social studies, math, science, and physical education, local schools may require participation in a wide range of courses including such activities as debate, composition, foreign language, even the study of "thrift".[1] Marconnit[2] has noted that local curricular control has resulted in the establishment of requirements which are not based on sound thinking but are the result of local pressure groups. He recommends that states develop finer articulation in curriculum to facilitate transition from one school system to another. Table I (from Marconnit) illustrates the wide diversity in curricular requirements among the states.

Beyond the flexibility allowed local districts in determining their curriculum, several states (e.g., California and Pennsylvania[3]) have enacted laws which relate directly to innovative, experimental programs. Such statutes allow the state to waive any or all requirements in experimental programs. However, the

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1. Security Nat. Bank v. Bagley, 210 NW 947, 202 Iowa 701.
2. Marconnit, G.D. State legislatures and the school curriculum, Phi Delta Kappan, 49: 269-272. January, 1968.
3. California Education Code, Section 8058.
   Pennsylvania Board of Education Codes, Chapter 5, Section 5.4.

TABLE 1. INSTRUCTION REQUIRED BY STATE CONSTITUTION OR STATUTE

State Instruction Required*

Alabama--1, 23, 24, 80, 89, 97
Alaska--89
Arizona--1, 11, 19, 89
Arkansas--3, 5, 9, 10, 14, 81, 83, 85, 89, 92, 97
California--1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 14, 17, 19, 25, 26, 38, 40, 41, 42, 43, 44, 49, 52, 55, 57, 61, 69, 80, 84, 85, 86, 89, 92, 93, 95, 96, 97
Colorado--1, 9, 10, 12, 21, 89, 90
Connecticut--1, 2, 3, 8, 9, 10, 11, 13, 14, 16, 17, 38, 41, 42, 43, 46, 61, 80, 81, 84, 85, 89, 91, 96
Delaware--1, 7, 10, 11, 21, 97
Florida-1, 9, 21, 24, 79, 80, 83, 89, 96
Georgia--80, 83, 85
Hawaii--
Idaho--1, 21, 84, 85, 89, 97
Illinois-18, 20, 21, 80, 85, 86, 89, 90
Indiana--1, 2, 3, 7, 10, 11, 18, 27, 28, 38, 41, 42, 43, 46, 47, 48, 50, 51, 52, 56, 57, 61, 62, 65, 66, 70, 71, 72, 86, 89, 93
Iowa--1, 2, 3, 5, 6, 9, 10, 11, 12, 14, 16, 29, 33, 34, 38, 41, 42, 43, 44, 46, 51, 52, 54, 55, 57, 59, 60, 67, 71, 72, 73, 83, 84, 85, 89, 90
Kansas--1, 2, 7, 8, 9, 16, 20, 38, 41, 42, 43, 46, 47, 61, 84, 91
Kentucky--83, 89, 97
Louisiana--1, 17, 22, 31, 76, 89
Maine--1, 3, 7, 17, 18, 19, 38, 69, 80, 84, 85, 93, 97
Maryland--2, 9, 15, 16, 38, 41, 42, 43, 44, 61, 88, 89, 90
Massachusetts--1, 2, 3, 5, 11, 13, 14, 16, 17, 38, 41, 42, 43, 45, 46, 56, 57, 61, 85, 89, 90

Michigan--1, 2, 7, 10, 11, 13, 14, 80, 89, 90
Minnesota--1, 17, 20, 84, 85, 86, 89, 90
Mississippi--2, 4, 7, 9, 10, 14, 29, 38, 41, 43, 44, 46, 47, 51, 60, 61, 65 67, 68, 74, 75, 76, 79, 88, 89, 90, 93, 99
Missouri--1, 3, 11, 89, 90
Montana--2, 5, 9, 12, 16, 19, 37, 38, 41, 42, 43, 46, 55, 57, 61, 79, 86, 87, 89, 90, 92
Nebraska--4, 5, 33, 38, 41, 42, 43, 44, 45, 54, 55, 57, 61, 67, 79, 84, 92
Nevada--1, 3, 6, 9, 11, 16, 19, 82, 85, 89, 90, 98
New Hampshire--1, 11, 17, 89, 90
New Jersey--2, 9, 12, 15, 16, 39, 84, 85, 89, 92, 93, 95
New Mexico--1, 2, 9, 11, 14, 17, 38, 41, 42, 43, 45, 46, 53, 56, 57, 61, 63, 74, 75, 80, 84, 85, 86, 89, 90
New York--1, 2, 3, 5, 9, 17, 38, 41, 42, 43, 45, 61, 67, 85, 91
North Carolina--8, 10, 23, 57, 89, 92, 93, 95
North Dakota--1, 2, 7, 38, 41, 42, 43, 45, 46, 61, 79, 80, 81, 85, 86, 89, 90
Ohio--1, 2, 3, 8, 9, 10, 11, 14, 38, 41, 42, 43, 44, 51, 54, 57, 58, 60, 69, 83, 84, 85, 89, 92, 93, 94
Oklahoma--16, 61, 74, 75, 79, 83, 84, 85, 89, 93, 95, 96
Oregon--1, 80, 86, 89, 92
Pennsylvania--1, 2, 8, 9, 10, 11, 80, 89, 90, 97

Rhode Island--1, 8, 9, 10, 11, 52, 84, 85, 89, 90, 92
South Carolina--1, 2, 9, 11, 38, 41, 42, 43, 51, 60, 61, 65, 79, 85, 86, 89, 90, 92, 93, 94
South Dakota--1, 11, 20, 86, 89
Tennessee--1, 2, 3, 8, 9, 11, 38, 41, 42, 43, 44, 56, 57, 61, 85, 88, 89, 91, 93
Texas--1, 2, 7, 9, 11, 38, 41, 42, 43, 47, 61, 77, 79, 80, 85, 89
Utah--86, 89, 90
Vermont--30, 32, 45, 51, 64, 69, 79, 84, 85, 89, 90
Virginia--1, 2, 7, 9, 17, 38, 41, 42, 43, 56, 61, 85, 89, 90, 92, 94, 95
Washington--2, 8, 9, 38, 41, 42, 43, 61, 80, 84, 85, 89, 90
West Virginia--1, 2, 5, 9, 11, 89, 92
Wisconsin--1, 2, 7, 9, 10, 11, 16, 17, 21, 35, 36, 38, 41, 42, 43, 47, 61, 78, 79, 80, 83, 85, 86, 89, 90, 92, 95
Wyoming--1, 11, 19, 80, 81, 89, 93, 95

*Numbers refer to key on p.27 Some cases may be outdated by subsequent legislative action.

Key

1-U.S.Constitution, 2-U.S. history, 3-American history, 4-history, 5-civics, 6-American government, 7-civil government, 8-government, 9-state history, 10-state government, 11-state constitution, 12-state civics, 13-local history, 14-local government, 15-local civics, 16-citizenship, 17-Declaration of Independence, 18-voting, 19-American institutions and ideals, 20-patriotism, 21- flag education, 22-Federalist Papers, 23-Americanism, 24-communism, 25-world history, 26-history of Western civilization, 27-ancient history, 28-medieval history, 29-social science, 30-political science, 31-military science and tactics, 32-sociology, 33-social studies, 34-economics, 35-cooperative marketing, 36-consumer cooperatives, 37-cooperative economics, 38-geography, 39-state geography, 40-world geography, 41-reading, 42-writing, 43-spelling, 44-English, 45-language, 46-grammar, 47-composition, 48-rhetoric, 49-public speaking, 50-American literature, 51-English literature, 52-foreign language, 53-Spanish, 54-fine arts, 55-art, 56-drawing, 57-music, 58-language arts, 59-general mathematics, 60-mathematics, 61-arithmetic, 62-commercial arithmetic, 63-elementary bookkeeping, 64-higher mathematics, 65-algebra, 66-geometry, 67-science, 68-general science, 69-natural science, 70-biology, 71-physics, 72-chemistry, 73-practical arts, 74-manual training, 75-home economics, 76-forestry, 77-cotton grading, 78-dairy products, 79-agriculture, 80-humane treatment of animals, 81-nature study, 82-fish and game laws, 83-conservation, 84-health, 85-physical education, 86-moral instruction, 87-prevention of communicable diseases, 88-sanitation, 89-alcohol and narcotics, 90-physiology and hygiene, 91-hygiene, 92-fire prevention, 93-safety education, 94-state traffic laws, 95-accident prevention, 96-automobile driver training, 97-Bible reading, 98-thrift, 99-home and community

From Marconnit, *op. cit.*

state is expected to evaluate the program yearly and may terminate a program at its discretion. A problem in seeking status as an experimental program is that it often requires more careful documentation and explanation prior to receiving such designation. An added disadvantage relates to the uncertainty and possible difficulty in equating courses in an experimental program with those in a regular school should a student wish to transfer back to a regular program.

In the past two decades, an increasing number of major education laws have been enacted by the federal government. All such acts expressly prohibit the government from exercising any control, supervision, or direction of curriculum. That same prohibition applies to books, library resources, or other printed matter.[1] However, where the government supplies funds for specific programs such as agricultural, home economics, or vocational education, it has provided guidelines as to the conduct and nature of such courses.

Some states have adopted or selected textbooks to be utilized in schools on the theory that a particular text defines or directs what is taught in the schools. A number of legal challenges have held that this authority does not infringe on local direction[2] and is not a burden on local school officials.[3]

1. 20 *USCA* sec. 1232a. While this section applies to nearly all federal agencies, it has not been included in the act of incorporation of the National Institute of Education.
2. *Polzin v. Rand*, 250 Ill 561, 95 NE 623; *State ex rel. Clark v. Haworth*, 122 Ind 462, 23 NE 946; *Campana v. Calderhead*, 17 Mont 548, 44 P 83; *Leeper v. State*, 103 Tenn 500, 53 SW 962.
3. *State ex rel. Clark v. Haworth*, 122 Ind 642, 23 NE 946; *Leeper v. State*, 103 Tenn 500, 53 SW 962.

The fact that the legislature has authority to prescribe textbooks does not make such prescription mandatory. Where states do select texts, there is usually stronger centralized control and the state's presence is more pronounced. The legislature itself does not have to select textbooks but may delegate the task to a special commission or other administrative body.[1] In whatever manner textbook designation is accomplished, it has been ruled that pupils, parents, and guardians have no voice in the matter.[2]

As a part of the establishment of a course of study, the state usually places a requirement upon the amount of time a student is instructed per week and/or per school year. Regulations are usually stated in broad terms which set the minimum number of days schools may be in session, the number of hours per week for instruction, and what amount of time constitutes a unit of instruction. Requirements are seldom stated in terms of number of minutes or hours that must be given to instruction in a given subject matter area. Some states include length of school terms in their constitutional or statutory provisions, but where they do not, school sessions are left to the discretion of local boards.[3] Statutory provisions may establish minimum school terms, but local agencies may not be restricted from fixing a longer annual term.[4]

1. Leeper v. State, 103 Tenn 500, 53 SW 962.
2. Trustees of Schools v. People, 87 Ill 303.
3. Morley v. Power, Tenn 10 Lea 219.
4. Bridges v. City of Charlotte, 20 S.E. 2d 825, 221 N.C. 472.

Another example of local discretion in establishment of curriculum is noted where electors, by majority vote, require the teaching of a particular course, such as family life or sex education. While the board has to carry out the wishes of the voters, it still may prescribe the method by which the course shall be taught.[1] However, it is expected in the law that teachers, principals and superintendents, and not members of the school board, shall have exclusive control of teaching methodology.[2] In order to keep materials and course content current, local directors and superintendents can create new courses and modify existing plans of study.[3]

Along with rules for required courses, the state can mandate special observances of events of state or national significance. Though school may continue in session, portions of the day (such as the presidents' birthdays in February) must be set apart and observed by appropriate activities.[4] Sometimes a state includes holidays which have special significance locally. For example, Oregon requires the observance of Arbor Day and commemoration of Frances E. Willard Day.

1. *Neilan v. Sioux City Independent School Dist. Board*, 205 N.W. 506, 200 Iowa 860.
2. *State ex rel. Rogers v. Board of Education of Lewis County*, 25 S.E. 2d 537, 125 W.Va. 579.
3. *Talbott v. Independent School Dist. of Des Moines*, 299 N.W. 556, 230 Iowa 949, 137 A.L.R. 234.
   Jones v. Holes, 6 A.2d 102, 334 Pa. 538 *Ehret v. School Dist. of Borough of Kulpmont*, 5 A.2d 188, 333 Pa. 518.
4. *California Education Code*, Sections 8551, 8571.
   Oregon Revised Statutes, Education and Cultural Facilities, Section 336.
   Pennsylvania Board of Education Codes, Chapter 5.

B. Issues Relating to Students in Career Education Programs

Student concerns when participating in an EBCE program include many of the same problems students face in any high school, namely course requirements, diploma or credentialing procedures, student activities and responsibilities, student rights, and transportation. However, the students in an EBCE program also have concerns which relate to the interface between school and employer, a special condition peculiar to various types of work experience programs. In this section we will review the general statutory and regulatory provisions which govern or influence the conduct of EBCE participants, with special concern for the unique problems of EBCE involvement.

1. Course Requirements and Choices

We have already discussed curriculum requirements (above) in the context of the school administrator's responsibilities to follow state prescriptions. Existing EBCE programs have generally met state guidelines by requiring students to take those academic courses prescribed by their state (See Table I, p. 26). In addition to several required courses, EBCE students usually take elective subjects, including the job exploration sequences which provide the first experiences on work sites. Prior to the on-site exploration study, orientation classes have been conducted which focus on job attitudes and on organizational structures of the various enterprises in which students will participate. Some form of the work orientation program usually continues as an element within an EBCE instructional program. The typical program would include components in language arts (sometimes basic reading skills), math and/or science, and work orientation (including personal living skills). In addition students choose from a number of work clusters the specific exploration activities they wish to pursue.

In terms of broader choice of subjects by students, the courts have not ruled decisively whether the student or his parents may demand greater control of his education. It has been decided that students should be able to make a reasonable selection from the offerings list prescribed by local authorities,[1] but another case has held that selection by the school is a reasonable regulation binding on parent and pupil, that selection of the school is final and that the parent has no right to pick and choose courses.[2] Obviously, these are conflicting positions. Individual circumstances would probably determine future decisions in tests of the local board's authority, but the principle of parental rights would influence the outcome. Courts have asserted that parents have (1) a right to have their children educated in public schools and (2) a constitutional right to direct, within limits, their children's studies. Thus, the power vested in the school board could not

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1. People ex rel. Vollmar v. Stanley, 81 Colo 276, 255 P 610.
2. State ex rel. Andrew v. Webber, 108 Ind 31, 8 NE 708.

deprive a parent of constitutional parental rights in order for a child to enjoy the opportunity of a public school education.[1]

The effect of regulations relating to course requirements may be summarized as follows:

1. The board of education has power to determine course offerings, consistent with state regulations.
2. The student and his parents have a right to select from the offerings list of a school, but may not demand instruction in courses or areas not being offered. (At the time of this writing, a landmark case is before the U.S. Supreme Court that would challenge the above statement. In Lau v. Nichols, it is being argued that the San Francisco Schools should be required to provide special instruction in English to some 9,000 non-English speaking Chinese students. If the Supreme Court rules in favor of the plaintiff, there could be a change in the rights of students and parents to demand courses of instruction that were necessary to assure them equal educational opportunity.)
3. Where board and parental authority would appear to conflict, the constitutional rights of parents to direct their child may be a factor which takes precedence.

In another curriculum related matter, the local board has the authority to determine the length of time school shall be "kept" or conducted each year, to determine holidays, and to prescribe special in-school observances.[2] The latter, however, would require that special observances not interfere with the reasonable separation of the state from religious bodies. That is to say, the board cannot prescribe religious observances in the schools.

Public schools are required to furnish a twelve-grade school service, but the method for providing that service is left to local discretion.[3] Among the options left to the school is the right to establish an ungraded school in which students engage in a prescribed course of study which is not based strictly on age or a graded sequence of classes. This ungraded curriculum would appear to be a most appropriate arrangement for EBCE programs since it would allow a school to meet basic state requirements, while simultaneously placing emphasis on a sequence which is based and builds upon student competencies. Many persons entering EBCE programs have shown disenchantment with regular school programs and may have dropped out temporarily. They may resent coming into programs where they are labeled by grade, when by age they are older. Ungraded EBCE programs are suggested as a means of avoiding this potential problem. It has been noted that it is an administrative function of the school to create new courses and to rearrange the curriculum as it deems necessary.[1] Ungraded programs clearly fall within that prerogative.

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[1] State ex rel. Kelley v. Ferguson, 95 Neb 63, 144 NW 1039; School Bd. Dist. v. Thompson, 24 Okla 1, 103 P 578.

[2] Morley v. Power, Tenn 10 Lea 219.

[3] Wilson v. Alsip, 76 S.W. 2d 288, 289, 256 Ky. 466.

2. Student Rights and Responsibilities

In the past decade an increasing number of cases have been brought before the courts challenging the longstanding authority of the schools to establish rules for conduct of students. Frequently school rules have been held to be arbitrary, outside the school's power to mandate, and contrary to the purpose of laws to provide a public school education to all who fall within prescribed age ranges. The volume of information, legal challenges, and court decisions cannot be treated fully here. However, several generalizations do pertain.

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[1] _Jones v. Holes_, 6 A. 2d 102, 334 Pa. 538; _Ehret v. School Dist. of Borough of Kulpmont_, 5 A. 2d 188, 333 Pa. 518.

1. Schools have the right to establish rules related to student discipline and behavior.[1]

2. Where students willfully disobey reasonable rules and regulations, the school may suspend, dismiss, or expell them from the school.[2]

3. The basis for appealing a school's disciplinary action rests on whether or not its rules are reasonable and are fairly applied. Judicial review is a question for a court of law but not for a jury.[3]

4. Schools have increasingly been called upon to defend rules relating to student appearance (dress, hair, etc.) and to demonstrate or prove in specific instances how variance from the rule interferred with instructional processes or management of the school.

3. Student Protection and Employer Liability

No issue in the range of legal or quasi-legal considerations has evoked as much attention among the current EBCE programs as has insurance and liability protection. The specific actions of the labs is described more fully in Chapter V. It is important to recognize some of the concerns which students and employers have expressed. The concerns have two major thrusts:

1. If an EBCE participant (student) is injured on an employer site or in activity related to his matriculation in the EBCE program, to what protection and medical care is he entitled?

2. If an EBCE participant should, without malice, cause injury to another person or damage to valuable equipment while participating in the program, what is the student's liability and responsibility?

While no specific cases arose to provide an actual test of these questions, each EBCE developer was conscious of them and each determined at an early date that adequate insurance coverage

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1. McClintock v. Lake Forest University, 222 Ill. App. 468.
2. Hood v. Tabor Academy, 6 N.E. 2d 818, 296 Mass. 509.
   Teeter v. Horner Military School, 81 S.E. 767, 165 N.C. 564, 51 L.R.A., N.S., 975, Ann. Cas. 1915D 309.
   Fessman v. Seeley, Civ.App., 30 S.W. 268.
3. Kentucky Military Inst. v. Bramblet, 164 S.W. 808, 158 Ky. 205.

was essential. What constitutes "adequate" coverage as determined by the Model II sites and what action they took in satisfying their requirements is described later. One aspect of resolution of these qustions is related to a definition of the student's status, that is, "learner" or "employee". As an employee, his right to benefits for injury on a job site would be quite clearly the responsibility of the employer and his insurer to resolve. Were he not an employee, the measure of protection and liability relief afforded the student is less clear.

The uncertainties of positive protection and relief from liability have prompted several labs to purchase special insurance coverage that provided protection and assurance to both the employer and the participant. Such coverage is available to any sponsoring EBCE agency at a nominal cost. Many states, however, hold governmental agencies, including public schools, immune from liability for injuries arising from the acts of the school board or its agents. Immunity from torts (wrongs) for public schools is well established in principles of common law.[1] (Individuals working in a public educational setting are not immune from damage suits resulting from their personal negligence.) EBCE programs are not required by law to carry insurance on students, but for a relatively small cost,

1. The concept of governmental immunity for school districts is not valid in a growing number of states which no longer use this as a defense against charges in tort. Both court and legislative actions have been directed at eliminating this rather archaic doctrine.

an EBCE program, whether public or private, can and should provide adequate liability protection to students, staff, and employers.

4. Transportation

Many states have passed laws which require the transportation of students to and from school at public expense. Where such statutes exist, there is usually state funding to public schools to reimburse a portion of the total cost. Unless there is a statutory provision, however, a local board is not bound to furnish free transportation. Local authority, which prevails in the absence of a statutory provision to provide transportation, includes the responsibility to determine guidelines for transporting students.[1] Neither those statutes which give all children "the right and opportunity to an equal education" nor those which give trustees the power to levy taxes for necessary school expenses confers authority to provide transportation at public expense.[2] Thus it is necessary to consult local statutes in determining whether transportation may or shall be provided.

Participation in an EBCE program usually requires movement of students within the school day, apart from normal travel to and from the school. Thus, an EBCE participant will likely be concerned not only about the to and from school transportation, but also about the provision for student conveyance to and from an employer site. The provision of such transportation is generally a decision for local authorities and is determined in large measure by the availability of funds. We were not able to ascertain whether such transportation, if offered by a public school, would fall within the concept of governmental immunity, if it still stands in that state.[1] It seems likely that, barring negligence, any transportation provided for the purpose of carrying out a public school board-approved program could fall within the immunity clause. Private schools, however, are not immune from payment of damages incurred in participation within their curriculums, though negligence may have to be proven.

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[1] Bruggeman v. Independent School Dist. 227 Iowa 661, 289 NW 5, ovrld on other grounds Wittmer v. Letts, 248 Iowa 648, 80 NW2d 561; Carothers v Board of Education, 153 Kan 126, 109 P2d 63.

[2] Mills v. School Directors of Consol. Dist. 154 Ill App 119.

Given that transportation within the school day is essential to an EBCE program, and that governmental immunity could apply were students injured in moving from one setting to another, public school EBCE developers would appear to have an obligation to provide transportation and be able to do so without incurring added liability. Present EBCE programs do make such provisions (see Chapter 5). Transportation need not be provided as a direct service, but may include reimbursement for travel on public conveyances. Often the latter is efficient and expedient, since many employer sites are located in commercial areas where public transit systems are concentrated.

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1. See footnote, page 36.

C. Issues Relating to Teachers and Staff

Another constituency which must be considered in the development of an EBCE program is the teaching staff. Included are not only persons who provide a direct instructional function, but also those who provide counseling, guidance, liaison with employers, and other administrative services. Some legal issues in the employment of EBCE personnel will be discussed, in addition to the rights and responsibilities of the staff.

1. Teacher Certification

The certification of staff members was described as the "Achilles heel" of one of the present EBCE models. For while all of the personnel seemed qualified by training or experience to carry out their designated jobs, not all had been certified by the state as teachers. (It was felt that most were eligible for such certification.) The potential weakness of an uncertified staff operating an educational program is that they are vulnerable to attack from the state and from organized teacher groups whose challenge may damage the reputation and public confidence in the EBCE program. In order to avoid such a challenge, EBCE developers should examine applicable state certification standards.

Certification standards are a matter of state jurisdiction and are delegated by the legislature to an administrative group which carries out the function of assessing credentials and issuing certificates. However, in the absence of state statutes, local directors may establish qualifications for employment of teachers.[1] Included in those qualifications may be factors which relate to moral character and other personal conduct not solely related to the teacher's classroom conduct and skills.[2] Once a valid certificate has been issued, the state must show cause if it revokes the certificate and the teacher has the right of access to the courts or to compensation for the loss of license, which is regarded as the taking of property.[3]

In general, the possession of a state license or certificate is a prerequisite to a teaching appointment,[4] but where necessity demands, schools may employ a person without proper certification. In that instance, the local officials must be satisfied that the person is qualified to perform expected duties.[5] Thus, an EBCE developer may hire a person who appears qualified but who lacks a certificate, and a conditional certificate may be obtained. Conditional certificates may be cancelled where it is later determined that the applicant does not possess the necessary qualifications.[6] Most conditional certificates are granted for a specified period of time, and a person employed under a temporary license or certificate does not have and usually cannot obtain job tenure. In some states where statutory power has not been vested in a state agency, local districts can set and apply their own requirements for certification.[1] Where the state has retained the authority to issue certificates, local districts may set higher, but not lower, qualifications for employment.[2]

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[1] *People ex rel. Fursman v. Chicago*, 278 Ill 318, 116 NE 158; *Commonwealth ex rel. Scott v. Board of Public Education*, 187 Pa 70, 40 A 806.

[2] *Shelton v. Tucker*, 364 US 479, 5 L Ed 2d 231, 81 S Ct 247.

[3] *Elmore v. Overton*, 104 Ind 548, 4 NE 197.

[4] *Buchanan v. School Dist*. 143 Kan 417, 54 P2d 930; *Flanary v. Barrett*, 146 KY 712, 143 SW 38; *Hosmer v. Sheldon School Dist. 4* ND 197, 59 NW 1035.

[5] *Hale v. Risley*, 69 Mich 596, 37 NW 570, where it appeared that no licensed teacher could be found, and that the one hired was as a matter of fact competent.

[6] *Adelson v. Board of Education of City of New York*, 98 N.Y.S.2d 763, *Gorodner v. Board of Education of City of New York*, 78 N.Y.S.2d 838.

Among the more common requisites for a teaching certificate or license are:

1. A baccalaureate degree from a standard teacher education institution.
2. Evidence of either successful teaching experience or a practicum classroom experience.
3. Recommendation to the certifying agency by the training institution.
4. Good moral character.
5. Minimum age, usually 18 years.
6. U.S. citizenship or has filed declaration of intention to become a citizen. Such a rule does not apply to foreign exchange teachers.
7. Freedom from communicable disease, alcohol or drug habit, or major physical defect.

While these requisites vary from state to state, some portion appeared as a basis for certification in the state codes which we examined.

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[1] Harrodsburg Educational Dist. v. Adams, 154 S.W. 44, 152 Ky. 735.

[2] Board of Education for Montgomery County v. Messer, 79 S.W.2d 224, 257 Ky. 836. Lena v. Raftery, 50 N.Y.S.2d 565, 183 Misc. 759.

An important new movement in teacher certification is the increasing trend toward performance-based teacher education and the acceptance of demonstrated competency for certification. Performance-based and competency-based are used synonymously. Roth[1] surveyed the status of performance based certification standards in the 50 states and the District of Columbia. He noted that states generally think of certification as performance based when the teacher training program has required candidates to demonstrate an acceptable level of competency in an actual instructional situation. The survey by Roth should be examined by EBCE developers concerned with the certification changes of their states. A review of activities in the several states on which our research has focused may illustrate some of the evolving trends.

During the 1971 legislative session, California enacted Assembly Bill 293 (the Stull Bill) which required each district to develop objective teacher evaluation guidelines, assessment procedures of teacher competence as it relates to established standards, and guidelines for assessing student progress. Teachers on probationary contracts must be reviewed annually, permanently certified teachers biennially.

Oregon established new rules, effective October, 1972, which encourage the development of teacher preparation programs based on demonstrated competency. The rules allow teacher education institutes to waive all or part of the course requirements for

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1. Roth, Robert A. Performance-based teacher certification: a survey of the states. ERIC Document 070753 December, 1972.

individual candidates with previous experience and demonstrated competency. It was noted that the new mode was expected to be gradual and of a transitional nature rather than an abrupt turnaround.

Pennsylvania has asked its teacher training institutions to particularize the competencies related to various programs. By June, 1972, each college was asked to submit a list of identified competencies from which taxonomies of competencies in each special area would be developed.

West Virginia had appointed a subcommittee of its Advisory Council on Teacher Education and Certification to examine the feasibility of performance-based certification. Through January, 1973, two workshops were held to study and recommend further action by the state.

We have noted earlier (p.25) that a state may waive any or all its requirements for an innovative or experimental program. That waiver would include teacher certification requirements. However, the question of appropriate certification of staff remains an issue until experimental program status is accorded the program. Acquiring that status is often a difficult procedure administratively. Even when such status is gained, the state may revoke it based on an annual review, thus requiring the program to meet certification and other requirements for public or private schools. In the long run, certification may become an essential to any continuing program and steps toward eventual employment of a fully certified staff should be initiated early in the EBCE program development.

2. Teacher Responsibilities

Homer,[1] in reviewing court decisions related to teacher duties and responsibilities, extracted the following conclusions:

1. State courts have consistently upheld the doctrine of sovereign immunity, ruling that, in the absence of a statute removing immunity, the concept would remain. Public schools may not be held responsible for student injury where the doctrine prevails. (Homer's conclusion on this point seems debatable, since there would appear to be a trend toward abrogation of the doctrine following the 1959 case of Molitor v. Kaneland Community Unit District No. 302.[2] Both Minnesota[3] and California, among others, have abrogated or modified this doctrine in the past ten years. Usually the courts, rather than legislatures have taken the lead in states where the doctrine has been changed or voided.) Teachers, however, even though employed by a public school, may be responsible in cases where student injury is shown to result from negligence or neglect of duty.[4] In view of such ruling, professional teacher organizations usually

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1. Homer, M.H. An Analysis of court decisions determining the duties and the liabilities of the teacher. Unpublished doctoral dissertation, West Virginia University, 1970.
2. Molitor v. Kaneland Community Unit District No. 302, 163 N.E. 2089.
3. Spanel v. Moundsview, 264 Minn. 279.
4. Johnson, Charles. "The legal status of the public school pupil in North Carolina." From Legal Issues in Education, E.C. Bolmeier (Editor). Charlottesville, Virginia: The Michie Company, 1970.

include among member benefits some form of liability insurance coverage.

2. The mere happening of an accident does not constitute negligence. It must be shown that a teacher's duties were specifically defined and assigned and that the teacher's breach of duty was the proximate cause of the student's injury.

3. Teachers have no responsibility to supervise students on their way to and from school unless the district has elected to provide transportation. Even then, the teacher must be specifically assigned to such a supervisory duty.

4. During the early 1960's, schools had only to declare that a student activity was disruptive in order to expel, dismiss, or suspend a student. However, courts have subsequently required schools and teachers to show cause why a student's behavior, dress, appearance, etc., was disruptive in order for an exclusionary action to be upheld.

Another example of greater restrictions on teachers with regard to student rights is in dealing with corporal punishment. Though this was once a widely accepted practice, changes in the times and a quickening of social conscience have placed some constraints on physical discipline. Vernon has pointed out, however, that in 1968 twenty-four states had laws which sanctioned corporal punishment, while only one, New Jersey, had legislation forbidding the practice.[1] While the practice may be legal, corporal punishment is not always appropriate for control of the typical student and teachers may be held personally responsible for injuries resulting from its use.

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[1] Vernon, Thomas. "Legality and propriety of disciplinary practices in the public schools." From Bolmeier, Ibid.

Chapter IV

LABOR ISSUES IN EXPERIENCE BASED CAREER EDUCATION PROGRAMS -- THE STUDENT'S STATUS ON AN EMPLOYER SITE

Introduction

The scope of this narrative includes (1.) the application of the Fair Labor Standards Act of 1938,[1] as amended (hereafter referred to as the Act) to experience based career education programs and (2.) examples from the statutes of California, Oregon, Pennsylvania and West Virginia as indications of the variety-potential of state law. The primary question presented is what criteria are there to determine if a minor is an employee under such an educational program. Such a question without specific factual problems or structure is by nature general and therefore the narrative is by nature general. Legislative histories, attorney general opinions, law review articles, treatises and extensive case law research with regard to relevant areas of law are omitted.

The overall discussion is intended to illustrate the variety and vastness of the law which may be applicable to EBCE. Ultimately the legal consequences of EBCE must be considered with regard to each state, the age of the child, and the occupation contemplated.

A. The Federal Jurisdiction

The restriction on employing children rests on the nature of the employer's business, the age of the child, and the existence of

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1. 29 USC 201 et seq. (The reader should note that new amendments to the Act as set forth by the 93rd Congress, 2nd Session, will become effective on May 1, 1974. Provisions dealing with "Employment of Students" and "Child Labor" in general may be of special interest in the context of this report.)

an employer-employee relationship. In order to have applicable federal jurisdiction, there generally must be interstate commerce involved in the employer's business.[1] The necessary element of interstate commerce is made clear in the prohibition of oppressive child labor: "No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce."[2]

Employment of children under the age of sixteen is defined as oppressive child labor.[3] Exception to this general rule is that where the child is employed:

1. by "parent or a person standing in the place of a parent employing his own child or a child in his custody under the age of sixteen."[4]
2. and in an occupation "other than manufacturing or mining."[5]
3. and in an occupation that the Secretary of Labor has not (a) found to be hazardous for children between the ages of 16 and 18, or (b) found to be "detrimental to their health or well-being."[6]

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[1] 29 USC 202, and 29 USC 203(b). For general constitutionality of the Act see: Opp Cotton Mills, Inc. v. Administration of Wage & Hour Division, 111 F 2d 23 (1940 CCA 5) aff'd by 312 US 126 (1941); United States v. Darby 312 US 100 (1940); and Roland Electric Co. v. Walling, 326 US 657 (1945).

[2] 29 USC 212 (c)

[3] 29 USC 203 (ℓ)

[4] Ibid

[5] Ibid

[6] Ibid

Further exceptions are:

1. If the child is between the ages of 16 and 14, if he is not employed in manufacturing or mining, and if the Secretary of Labor determines that the employment (a) "is confined to periods which will not interfere with "the child's schooling or (b) is confined "to conditions which will not interfere with "the child's schooling or (b) is confined "to conditions which will not interfere with" the child's "health and well being".[1]

2. If the child is under 16, is not working for his parents or on a parent owned farm, and is working at an agricultural occupation that the Secretary of Labor has not found to be hazardous for children under 16.[2]

3. Otherwise, if the child is under the age of 16, and is employed in agriculture that is "outside hours for the school district where such employee is living while he is so employed."[3] and is not employed at work determined to be hazardous by the Secretary of Labor.[4]

4. If the child is employed as an actor or performer in motion picture, theatrical productions or radio or television productions.[5]

5. If the child is employed delivering newspapers.[6]

1. 29 USC 203 (ℓ)
2. 29 USC 213 (c) (2)
3. 29 USC 213 (c) (1)
4. 29 USC 213 (c) (1); 29 USC 212; 29 USC 203 (ℓ) (1)
5. 29 USC 213 (c) (3)
6. 29 USC 213 (d)

6. If the child is employed as a "home worker engaged in making of wreaths composed principally of natural holly, pine, cedar or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths)."[1]

The last three exceptions apply for children between the ages of sixteen and eighteen as well. The Act defines as oppressive child labor, employment of children between 16 and 18 in occupations that the Secretary of Labor determines to be hazardous or detrimental to health.[2]

It should be noted that Section 12(a) of the Act also contains an important consideration related to oppressive child labor in commerce. That section provides that "No producer, manufacturer or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed."[3] Thus, regardless of whether the dealer, producer or manufacturer were himself an employer of oppressive child labor, the law would be applicable if he shipped or delivered goods from employers of oppressive child labor. The effect of this provision is to extend to all those engaged in commerce a legal restriction and warning that conditions

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1. 29 USC 213 (d)
2. 29 USC 203 (ℓ)
3. 29 USC 212 (a)

of oppressive child labor may have consequences beyond that of directly employing such labor. This section of the law should specifically dissuade others in commerce from taking competitive advantage of oppressive child labor by dealing in goods arising out of such conditions. In effect, this should discourage employers and their customers from seeking personal gain through illegal use of oppressive child labor.

Determination of occupations that are hazardous under the child labor provision of the Act are contained in Regulations issued by the Secretary of Labor. Because the types of employment a child may encounter in experience based career education are varied, it is beyond the scope of this chapter to enumerate those regulatory determinations.[1] Furthermore, survey of whether or not a particular business falls within interstate commerce, because such determination rests on the particular facts concerning that business, is outside the scope of this chapter. It should be noted, nevertheless, that the Act provides that employers who unwittingly employ children in violation of the Act but have on file an unexpired age certificate issued pursuant to regulations of the Secretary of Labor, will not be deemed to be in violation of the Act.[2]

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1. See 29 CFR Parts 519, 520, 527, and 570. Note in particular Subparts C, D, and E of 29 CFR Part 570.
2. 29 USC 203 (ℓ), 29 CFR Sections 570.117(b), and 570.121. See also 29 CFR Part 570 subparts A and B.

The important consideration is whether or not a child is indeed an employee. If the child is not an employee then it would follow that the Act does not apply to his activities in experience based career education. The Act defines "Employ" as "includes to suffer or permit to work";[1] "Employee" as "includes any person acting directly or indirectly in the interest of an employer...";[2] and "Employee" as "includes any individual employed by an employer..."[3] Thus to be an employee one must be acting directly or indirectly for one who suffers or permits one to work. This is indeed a broad scope for defining an employment relationship, and the Supreme Court has recognized this when it declared that there is "no definition that solves all problems as to the limitations of the employer-employee relationship".[4] In determining whether or not the relationship exists, the Supreme Court has indicated that such determination is not to rest on technicalities or words of art in the law.[5]

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1. 29 USC 203 (g)
2. 29 USC 203 (d)
3. 29 USC 203 (e) This definition excepts for the purposes of "Man-day" specified agricultural work.
4. Rutherford Food Corporation et al v. McComb, 331 US 722 (1947), hereafter referred to as Rutherford.
5. Rutherford, Walling v. Portland Terminal Co., 330 US 148 (1947) incorporated similar approaches of NLRB v Hearst 322 US 111 (1944) and United States v. Silk 331 US 704 (1947). Hereafter these cases will be referred to as Portland, Hearst, and Silk respectively. The Hearst and Silk cases dealt with the National Labor Relations Act (29 USC 151 et seq.) and the Social Security Act (46 USC 301 et seq.) respectively. The court stated:

> Congress had in mind a wider field than the narrow technical legal relation of "master and servant", as the common law had worked this out in all its variations, and at the same time a narrower one than the entire area of rendering service to others. (Emphasis added) 322 US 111 at 124. (Continued next page.)

The determination of "the relationship does not depend on ... isolated factors, but rather upon circumstances of the whole activity",[1] or upon the "economic reality" of the situation.[2] The Act has generated much litigation[3] but no hard and fast definition of the employer-employee relationship.

There have, however, been factors developed that have been taken into consideration when determining the existence of an employment relationship. The Supreme Court indicated in United States v Rosenwassen[4] that, unless specifically excluded, the Act was intended

(Footnote No. 5 continued from previous page) --

> As the ... legislation is an attack on recognized evils in our national economy, a constricted interpretation of the phrasing by the courts would not comport with its purpose ....
>
> Of course this does not mean that all who render services are employees. (Emphasis added) 331 US 704 at 712.
>
> The word "employee" ...was not... used as a word of art, and its content in its context was a federal problem to be construed "'in the light of the mischief to be corrected and to the end to be attained'". 331 US 704 at 712.
>
> Previously in Tennessee Coal, Iron & RR Co. v. Muscoda Local No. 123, 321 US 590 (1944), hereafter sited as Tennessee Coal, the Court also indicated that the FLSA was for a "remedial and humanitarian purpose" designed to protect "the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profits of others", and that "such a statute must not be interpreted or applied in a narrow, grudging manner".

[1] Rutherford

[2] Bartels v. Birmingham, 332 US 126 (1947), hereafter cited as Bartels.

[3] See Goldberg v. Wade Lahan Construction Co., 290 F 2d 408 (1961), footnote 4 in which 30 cases regarding FLSA were cited from the Supreme Court alone.

[4] 323 US 360 (1944) at 363.

by Congress to include all employees within its scope. Determining if one is an employee, the court has considered such factors as:

1. The control of the employer over the employee manifested in such considerations as --
    - a. The work was performed on the Employer's premises and his equipment was used for the work,[1]
    - b. The employee or the group of employees do not operate as a separate business organization,
    - c. Management supervision of the worker,[3]
    - d. Compensation to the employee does not depend "upon the initiative, judgment or foresight of the typical independent contractor",[4]
    - e. Permanency of the relationship,[5]
    - f. The employee is not accepting responsibilities of his own investments in the business.[6]
2. The benefits provided by the employee
    - a. Are an integral part of the employer's business,[7]
    - b. Provide a specialty of work within the business production,[8]
    - c. Run to the employer.[9]

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[1] Rutherford.
[2] Ibid.
[3] Rutherford, Silk.
[4] Rutherford.
[5] Bartels, Silk.
[6] Silk.
[7] Ibid.
[8] Rutherford, Silk.
[9] Tennessee Coal:

> ...We cannot assume that Congress ... was referring to work or employment other than those that are commonly used as meaning physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer and his business. at 598.

See also Schultz v. Hinojosa, 432 F 2d 254 (1970 CCA 5); Wirtz v. Lone Star Steel Co., 405 F 2d 668 (1968 CCA 5); and Tobin v. Anthony Williams, 196 F 2d 547 (1952 CCA 8).

3. As indicated before, the entire economic relationship to be considered is one of the goals of regulation of the Act.

Because the court looks at the totality of the relationship, such a listing of factors should not be read as strict elements which must all be set in order to be considered an employee. Nevertheless, while the Act is designed to encompass all employees, there is a spectrum which the Supreme Court has recognized in which a person may not be considered an employee, and hence not subject to the provisions of the Act.[1]

It could be said that, as the Supreme Court might have indicated in footnote 11 of *Tennessee Coal, Iron & RR Co. v. Muscoda Local No. 123*,[2] when an individual exerts himself "for improvement in one's material, intellectual or physical condition, or under compulsion of *any kind*, as distinguished from something undertaken *primarily for* pleasure, sport, or immediate gratification" (emphasis added), then one works. If an individual suffers or permits one to do this then one could say that an employment relationship has come into existence.

However, as Justice Black pointed out in *Walling v. Portland Terminal Co.*:[3]

> The definition "suffer or permit to work" was obviously not intended to stamp all persons as employees who, *without any express or implied compensation agreement,* might work for their own advantage on the premises of another. Otherwise all students would be employees of the school or college they attended, and as such entitled to receive minimum wages. So also, such a construction would sweep under the Act each person who, *without promise or expectation of compensation, but solely for his personal purpose or pleasure*, worked in activities carried on by other persons either for their pleasure or profit. (emphasis added).

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[1] See footnote 5 on page 51, supra.
[2] 321 US 590 (1944) at 598.
[3] 330 US 148 (1947) at 152.

The Supreme Court has, therefore, indicated that there must be compensation or wages owed to one who is to be considered an employee.[1] Consequently, a child in the experience based career education program could not be considered to be an employee under the Act. This position is maintainable even though it might be said that he seeks to improve himself intellectually or to improve himself under the compulsion that without such training, his future employment and economic well-being will be adversely affected, or that the training or experience the child receives is compensation. This conclusion does not rest on merely the lack of wages:

The Portland case involved trainees receiving experience and instruction, over a seven-day period, as prospective yard brakemen for a railroad. The training was not one of simulation as one would find in a vocational school but consisted of actual operation of facilities. They were closely supervised and controlled. Their activity did not displace any of the regular employees, and consequently, their status as non-wage earners could be interpreted as a deterrent to their otherwise finding secure employment, which is one of the purposes of the Act, should the Act have been found to apply to them and to require imposing of minimum wage. The employer derived no immediate advantage from the trainee's activities, which indeed at times actually impeded the company's business. Finally, the trainees were not entitled to a job at the end of the training period.[1]

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[1] See also Walling v. Nashville C & ST.L.RY., 330 US 158 (1947), hereafter referred to as Nashville; and Rutherford, at 728-729. In the Portland case there was "remuneration" of $4 per day called as "contingent allowance". But the court stated that the findings in the lower court did not otherwise indicate that the railroad ever undertook to pay the trainees or that the trainees expected to be paid for the training period.

The court ruled that such trainees were not "learners" within the meaning of the Act, and that the Act "was not intended to penalize railroads for providing, free of charge, the same kind of instruction at a place and in a manner which would most greatly benefit trainees."[2] In short, the work was primarily for benefit of the trainees in a manner that did not qualify the trainees to be considered employees. They were beyond the broad scope of the FLSA employer-employee relationship because they were receiving, gratis, experience which even if they paid for it as one might at a private vocational school or even as they might pay for it by any advantage passed on to their quasi-employer, was primarily for the trainee's benefit. The Court did not consider this benefit as a form of compensation.

The Court in passing referred to Walling v. Jacksonville Terminal Co.[3] In this case, the Circuit Court states that "[a] purely voluntary service, for which no one intends there shall be pay, is

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1. It is from these facts that criteria 1,3,4 and 5 of Employment Relationships Under the Fair Labor Standard Act, February, 1973 (WH Publication 1297 Rev.) are evidently based on, and from which pamphlet Tincher, in a letter to the counsel for Appalachia Education Laboratory on July 7, 1972, quotes verbatim. It should be further noted that on Page 8 of the pamphlet it states: "This publication is for general information and is not to be considered in the same light as official statements of positions contained in Interpretive Bulletins and other such releases formally adopted and published in the Federal Register."
2. Portland at 153. Evidently this is the basis for criteria 2. (Criteria 6 is evidently based on the text cited immediately following footnote 4, page 53).
3. 148 F 2d 768 (1945 CCA5) hereafter referred to as Jacksonville Terminal.

not employment, but a gift."; and that "[b] the benefit immediately in view was to the trainee, that he might learn, might qualify himself for a job which he desired." This case has less factors on which to find an employment relationship because the trainee not only is uncompensated but also the employer exercised no control over him — in particular, the trainee was not required to report at specified times, he was free to come and go as he pleased, and he was not subject to rules applicable to other employees of the company. Because there is not as strong a situation to find an employment relationship, this case is perhaps distinguishable from a program in which, save lack of compensation, control and supervision is exercised over the child trainee over the age of 16 in a non-hazardous occupation.

By paying no wages or other compensation in a child trainee program, the important factor under consideration becomes one of schooling, not employment. What the Act attempts to bestow on workers is minimum wages, but when no wages are paid, the Act becomes inapplicable with regard to the employment definition. It is possible that, if an employer attempted to thwart the Act by taking advantage of children, a court might apply the Act anyway.

One method to attack this circular position or anomaly is to distinguish Tennessee Coal, Jacksonville Terminal, Portland, Nashville, and Rutherford by arguing that these cases do not involve child labor. (The Jacksonville Terminal case implies as much.)[1] The problem in distinguishing this line of cases in such a manner is that the last case, Rutherford, notes that the definition of employ "derives from the child labor statutes"[2] of the states. Thus despite the fact that none of these cases involved child labor, the major consideration is not the age of the employing children, but if work is done which "follows the usual path of an employee."[3] Cases in which the Supreme Court has dealt with child labor concern only the nature of the business[4] not the nature of the employment relationship. Nevertheless, as noted earlier, it is possible if the conditions of labor were such that they fell under the purview of the "mischief" which the Act was designed to correct then the Act might be applied.[5]

The Act also covers employment of students for the purpose of preventing "curtailment of opportunities for employment."[6] The Act empowers the Secretary of Labor to promulgate rules and regulations with regard to such student employment,[7] regardless of age but in compliance with applicable child labor laws."[8]

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1. 148 F 2d 768 at 770.
2. Rutherford at 728. See also footnote 7 therein.
3. Rutherford.
4. Western Union Telegraph Co. v. Lenroot, 323 US 490 (1945); Gemsco, Inc. v. Walling, 324 US 244 (1945).
5. See Hodgson v. Griffin and Brand of McAllen, Inc., 471 F. 2d 235 (C.A. 5 1973), certiorari denied 414 U.S. 819. In this case, a farmer and independent contractor who hired migrant workers to harvest the farmers' crops were jointly liable for violations of the Act, including the employment of oppressive child labor.
6. 29 USC 214(b) and (c).
7. Ibid. Such regulations are contained at 29 CFR Parts 519, 520 and 527.
8. Op. cit.

However, the same logic would appear to apply: namely that, if the child is not employed then the provisions of the Act do not apply to him.

B. The State Jurisdiction

Each state has its own law regarding child labor and it is beyond the scope of this chapter to survey and summarize those statutes. However, examples from the statutes of California, Oregon, Pennsylvania and West Virginia will be given, without the entire statutory structure and court construction.

These four states provide in their statutes administrative rules and regulations for minimum ages below which employment is either forbidden, or specifically permitted in certain occupations or under certain specified conditions.[1] Generally the legislation is directed at specifying what is hazardous or unsavory work,[2] the hours the child works[3] (which includes interference with school attendance and night work),[1] certificates of age and/or employment,[2] and respective procedures of record keeping, notices, enforcement of the Acts and penalties for violations. This body of law even without attention to the administrative and case law is indeed extensive and detailed, and should be specified with regard to occupations that children in EBCE are involved with. Such a narrative would be an extensive undertaking. Nevertheless, a few general and loose observations can be made.

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[1] *California: Labor Code*, Sections 1291, 1290, 1299; Education Code, Sections 151.1, 16683, 16673, 17001, 17081, 17082.
Oregon: Oregon Revised Statutes, Sections 653.320, 653.325, 653.340.
Pennsylvania: Purdons, Title 24, Sections 13-1391, 13-1392; Title 43 Sections 41, 428, 48, 48.2, 49, 67, 68, 69, 1423.
West Virginia: *West Virginia Code*, Section 21-6-2.

[2] *California*: L.C. Sections 1308, 1309, 1394, 1292, 1293, 1294, 1295, 1297, 1298; E.C. Sections 10234.
Oregon: ORS Sections 653.330, 653.335, 653.340.
Pennsylvania: Title 18 Sections 4524, 4643, 4642, Title 19 Section 4645; Title 43 Sections 44, 48; Title 48 Section 44.
West Virginia: W.V.C. Section 21-6-2.

[3] *California*: L.C. Sections 1391, 1391.1, 1394.
Oregon: O.R.S. Sections 109.520, 653.315.
Pennsylvania: Title 48 Section 46.
West Virginia: W.V.C. Section 21-6-7.

In forbidding work of minors, the legislation will either choose occupations or conditions of work that are hazardous to health, life, or limb or they will designate occupations that are immoral, corrupting, or exploitive. In the first category the statute can, of course, be set up in general or specific terms. For example, California's L.C. 1292 specifically prohibits children under the age of 16 years from being employed "or permitted to work in any capacity in

(a) Adjusting any belt to any machinery.

(b) Sewing or lacing machine belts in any workshop or factory

(c) Oiling, wiping, or cleaning machinery, or assiting therein."

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[1] Relevant School attendance:
California: E.C. Sections 9032, 12704, 16601, 16622, 16623, 16627, 17001, 17021.
Oregon: ORS Sections 336.135, 653.445, 653.440, 653.990, 339.010.
Pennsylvania: Title 43 Section 46; Title 24 Sections 1421, 1422, 1423, 1425, 13-1327.
Relevant to Night Work:
California: L.C. Sections 1297, 1298, 1391, 1395.
Oregon: ORS Sections 653.340, 655.315.
Pennsylvania: Title 24 Section 104; Title 43 Sections 48, 46.
West Virginia: W.V.C. Section 21-6-7.

[2] California: (Permit system) L.C. Sections 1300, Sections 1300, 12765, 12768 to 12771, 12774, 12776, 1278(a), 12779, 12777, 1285, 12788, 1298, 1390, 1394, 1395, 1396, 1397; E.C. Sections 12301, 12304, 12269, 12251, 12253, 12267. Oregon: ORS Sections 653.320, 339.010. Pennsylvania: Title 24 Section 13-1392; Title 43 Section 13-1392; Title 43 Section 50, 52, 58, 65, 491-11. West Virginia: W.V.C. Sections 21-6-5, 21-6-3.

Sections 1293 and 1294 of the Labor Code also detailed other activities of children under 16. (It should be noted that under Section 1295 "work experience educations programs" are excepted from such prohibitions "provided that the work experience coordinator determines that the students have been sufficiently trained in the employment or work otherwise prohibited by such sections, if parental approval is obtained, and the principal or the counselor of the student has determined that the progress of the student toward graduation will not be impaired." The work experience education programs are established under Section 29007.5 of the Education Code and the criteria for such programs are contained therein. It should also be noted that these requirements appear to be aimed at vocational institutions.)

Examples of framing prohibitions of employment under relevant ages in terms of the specific types of occupation are seen in Oregon, Pennsylvania, and West Virginia. Oregon prohibits in ORS Sections 653.330 and 653.335 that no person under 18 may

(a) "Act as an engineer of or have charge of or operate any logging engines used in logging operations." and

(b) "Run, operate or have charge of, any elevator used for the purpose of carrying either persons or property."

and that no person under 16 may "act in the capacity of giving signals to the engineer in logging operations or receiving and forwarding such signals". Pennsylvania lists by the age limits of 16 and 18 prohibitions in Title 43 Section 44 in detail: from working in bowling alleys where alcohol is served to places where explosives are manufactured.

Title 43 Section 44. Prohibited Employment for Minors under 16 and 18.

No minor under sixteen years of age shall be employed or permitted to work in, about, or in connection with, any manufacturing or mechanical occupation or process; nor on scaffolding; nor in heavy work in the building trades; nor in stripping or assorting tobacco; nor in any tunnel; nor upon any railroad, steam, electric or otherwise; nor upon any boat engaged in the transportation of passengers or merchandise; nor in operating motor-vehicles of any description; nor in any anthracite or bituminous coal-mine, or in any other mine.

No minor under eighteen years of age shall be employed or permitted to work in the operation or management of hoisting machines, in oiling or cleaning machinery, in motion; at switch-tending, at gate-tending, at track-repairing; as a brakeman, fireman, engineer, or motorman or conductor, upon a railroad or railway; as a pilot, fireman, or engineer upon any boat or vessel; in the manufacture of paints, colors or white lead in any capacity; in preparing compositions in which dangerous leads or acids are used; in the manufacture or use of dangerous or poisonous dyes; in any dangerous occupation in or about any mine; nor in or about any establishment wherein gunpowder, nitroglycerine, dynamite, or other high or dangerous explosive is manufactured or compounded: Provided, That minors age fourteen and over may operate power lawn mowing equipment: And Provided further, That such minors may work where such chemicals, compounds, dyes and acids are utilized in the course of experiments and testing procedures, in such circumstances and under such conditions and safeguards as may be specified by rule or regulation of the Department of Labor and Industry.

No minor under eightteen years of age shall be employed or permitted to work in, about, or in connection with, any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold, or dispensed; nor in a bowling alley; nor in a pool or billiard room: Provided, That male or female minors sixteen years of age and over may be employed and permitted to work in a bowling alley, or that part of a motel, restaurant, club or hotel in which liquor or malt or brewed beverages are not served.

No minor shall be employed or permitted to serve or handle alcoholic liquor in any establishment where alcoholic liquors are sold or dispensed; nor be employed or permitted to work in violation of the laws relating to the operation of motor vehicles by minors.

This particular statute continues in broader language, a delegation of authority to the Industrial Board of the Department of Labor and Industry:

> In addition to the foregoing, it shall be unlawful for any minor under eighteen years of age to be employed or permitted to work in any occupation dangerous to the life or limb, or injurious to the health or morals, of the said minor, as such occupations shall, from time to time, after public hearing thereon, be determined and declared by the Industrial Board of the Department of Labor and Industry: Provided, That if it should be hereafter held by the courts of this Commonwealth that the power herein sought to be granted to the said board is for any reason invalid, such holding shall not be taken in any case to affect or impair the remaining provisions of this section.

Regulations, of course, add to such enumeration.

There are other examples of jobs in which children may not be engaged. For example, Section 1308(1) of the California Labor Code prohibits a child under 16 years from being engaged in "any business, exhibition or vocation injurious to health or dangerous to life or limb of such a minor".[1] West Virginia legislates that the Commissioner of Labor, Director of Health, and Superintendent of Free Schools may determine that an occupation is "sufficiently dangerous to the lives or limbs or injurious to health or morals of children under eighteen years of age, to justify ... (the child's) ... exclusion therefrom.[2]

The second category of occupations restricting employment of minors is one that is morally corruptive to the child or exploitive

1. This is a criminal statute, and hence, does not delegate any administrative powers to determine what is injurious to life or limb.
2. W.V.C. Section 21-6-2.

of the child in the eyes of the legislature. For example, a broadly worded statute in California[1] prohibits a person who has "control of any minor" under the age of 16 and employs or "uses" such minor in "[a]ny obscene, indecent, or immoral purpose, exhibition or practice whatsover." Alcohol being a restricted drug, Pennsylvania[2] prohibits persons under 18 years from being "employed or permitted to work in, about, or in connection with, any establishment where alcoholic liquors are ...manufactured ...sold, or ...dispensed...." Statutes that regulate the child performer can also be considered in this category.

Thus a wide variety of occupations are dealt with in state law that is not necessarily conjunctive with federal law. Aside from procedures of notice and filing of records, either certificates of age or certificates of employment (work permits) or both may be required. The requirements of these certificates depend on the age and/or occupations of the child and need not be enumerated here. Suffice it to say that, as with provisions for what hours a child might work, the legislatures appear to be concerned with the tension between division of a child's time between schooling or education and working outside the traditional educational structure.

None of these child labor statutes answer the basic question of a child doing work but not receiving compensation. This question is again basic to the legal status of the child during mishaps to himself

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1. California L.C., Section 1308. For general review of cases concerning statutes designed to protect minors against obscenity see 5, ALR 3d 1214, 1223.
2. Title 43, Section 44.

or to his "employer" or to his "employer's" business. Insurance may be able to meet the undefinable dangers a child may become involved with in injury to third persons, to third person's property or to property owned by the "employer". The specifics of contract law, tort law, agency, master and servant relationships, insurance, workman's compensation and other relevant fields of consideration are too broad to consider in detail in this chapter.

Where the status of the child as an employee is at issue, the definitions of the relevant statute may be helpful. For example, Oregon[1] provides that whether a minor is employed lawfully or unlawfully he is entitled to workman's compensation. It is arguable that if the child is not "employed", he is not eligible for compensation under such an act. And ORS Section 656.002 defines "workman" to include a minor and to be one "who engages to furnish his services for a renumeration, subject to the direction and control of an employer." Assuming that the act covers the occupation a child is injured in, because he is not "remunerated", it would follow that he is not employed and therefore he could not collect. (This does not mean, depending on the circumstances, that he is deprived of recovery for his injury, but that the course of recovery may be more difficult.) In California, on the other hand, it is arguable that an uncompensated minor can obtain workman's compensation benefits so long as his services are not gratuitous.[1] Unfortunately, it is possible, if one defines that the work done by a child in EBCE as benefitting him more than the employer, and that this benefit is not compensation or consideration under contract, his work is then gratuitous.

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[1] ORS, Section 656.132. There is no case as of yet that has been decided by the Supreme Court of Oregon on the issue of definition of employment with regard to the statute. Manke v. Nehalem Logging Co., 211 Or. 214, 315 P 2d 539 (1957) decided on other issues, does not indicate, other than the decedent minor was permitted to work without any permit or certificate, if the child was paid or expected payment. It was simply stated that he was employed.

Taking a definitional approach to the child as an employee is a broad one. The broadening of the definition comes undoubtedly from placing under the definition of work as many activities as are arguable considering the statute involved. The only way to circumvent the problem of gratuitous service as not being within an employment relationship is not to regard wages necessary to the relationship.

For example, in Commonwealth v. Griffith 204 Mass 18, 90 NE 394 (1910), the court dealt with unlawful employment of children in a play.[2] The child was not paid wages. The court dealt with the meaning of the word "work" and "employ". In dealing with the work

1. Jones v. Workmen's Compensation Appeal Board, 20 CA 3rd 124, 97 Cal Rptr 554 (1971). This case deals with the voluntary work of an unionman picket, and cites the proposition that "a volunteer who renders wholly gratuitous services is not an employee unless special statutory provisions are made for his undertaking." (As for example L.C. Section 3364.55 which provides that juveniles under court order to do rehabilitative work on public property be eligible for Workman's Compensation.) This case was, however, decided on the proposition that compensation under the employment relationship need not be in the strict form of wages so long as there is some form of economic compensation and employer control. The work was not found to be gratuitous.
2. Hereafter cited as Griffith. The statute provided: "No child under the age of fourteen shall be employed at work performed for wages, or other compensation, to whomsodver payable, during hours when the public schools of the city or town in which he resides are in session, or be employed at work before six o'clock in the morning, or after seven o'clock in the evening." Rev. Laws Ch. 106 Section 28, as amended by St. 1905 p. 190 c 267. This statute is superceded by Annotated Laws of Massachusetts Ch. 149 Section 60 as amended.

the court said:

> ...We are of the opinion that it should be given a broader meaning. The statute was intended to protect children from employment calling for *constant attention, regular effort and physical or mental strain*, to accomplish the desired result. The word "work" is of broad signification. One of its primary meanings, as it is defined in Webster's International Dictionary is "effort directed to an end," ... (emphasis added).

And in dealing with the meaning of "employ":

In rejecting the idea that compensation was necessary to consider the boy's acting unlawful employment, the court pointed out, among other things, that "He [the employer] gave to the boy an opportunity for *valuable training* ...." The court went on to state that:

> The payment of compensation, as such, is not a necessary element of employment. If one is procurred to work regularly under an agreement, rendering valuable service for a specified time, it may be found that he is employed, *although he receives nothing as an agreed compensation.* He is used and relied upon to accomplish the purpose of his employer (emphasis added).

It should be understood that this case is by no means representative of a major weight of authority. Indeed, aside from Pruitt v. Harker,[1] it is the only case we found where a trainee-uncompensated *child* is considered with respect to defining an employment relationship.[2] And it should be further pointed out that definitions of such kind need to be read in the context of (1) the facts (2) legal duties and liabilities involved, and 3) the statute, if any, involved.[1]

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[1] 328 Mo 1200, 43 S.W. 2d 769 (1931), hereafter cited as *Pruitt*.

[2] *Commonwealth v. Griffith* is cited in *Commonwealth v. Wallace Y Mong*, 261 Mass 226, 158 NE 759 (1927); Akins' Case 302 Mass 566, 20 NE 2d 760 (1939); and *In re West*, 313 Mass 150, 46 NE 2d 760 (1943). None of these cases involves an unpaid employee. (*In re West* did note that "[r]estriction upon the freedom of contract imposed in the interests of society in general and for the benefit of minors in particular must be observed by those seeking to avail themselves of the service of those under age.") The only case where it is cited and non-compensation is involved, is *Employers' Liability Assurance Corporation, Ltd. v. Wasson,* 75 F 2d 749 (1933 CCA8). In this case a binding "employment or agency" was found but the rest of the case has nothing to do with child labor. See language cited at footnotes re: *Portland* and *Tennessee Coal*, supra.

In Pruitt v. Harker[2] there is a weaker set of circumstances. The case involved Workman's Compensation vis-a-vis a non-wage child employee. The relevant issue in this case is that the child was the son of the alleged employer and that therefore he was "...working for his father on account of that relationship and not under any contract of employment, express or implied." Since "[h]is father was entitled to his services without compensation, and none was promised", the child, it was contended, was not an employee. However, the court found that he was an employee because:

(1) the case does not "involve the question of liability for wages," and

(2) the claim is under "a workman's compensation act rather than an employee's compensation act" (emphasis added).

Despite the lack of legal obligation to pay the son, the son was doing the work of an adult and the court implied that such benefit to the employer was sufficient to place the child under the act: "That ...[the son] ... was a workman engaged in work covered by this act, we think is clear, whether the strict relationship of employer and employee exists or not." And the court reiterated the broad meaning of the term employee placing emphasis on the statutory language "in service of any employer".[1]

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[1] See for example annotations at 16 ALR 537 and 72 ALR 141 in which the Griffith case is mentioned.

[2] Pruitt is cited in many cases but the only one that deals with a non-paid employer is Lawson v. Lawson, Mo. App., 415 SW 2d 313 (1967). The court in this case reiterated: "But even as the master-servant relationship may exist not withstanding the fact that the servant neither expects nor is entitled to receive compensation... citations omitted ..., so payment of wages or compensation, although usually incident to an employer-employee relationship, is not always an essential element thereof... citations omitted" (emphasis is the courts).

The Griffith and Pruitt cases indicate that it is possible to consider an uncompensated child as an employee, but these cases are only instances in a sea of cases in which compensation is assumed or essential in the employment relationship. In order to find that compensation is not essential to the relationship one, by necessity, needs (1.) to deal with broad statutory language and primary definitions, as we have already seen at the federal level[2] and (2) to find valuable service to the employer as well as a benefit running to the employee which is an element even to the Griffith case. In the Griffith case the court noted the value of the training to the children even though it emphasized the great value their services were to their employer. Without getting into the philosophies of contract law, where a court is going to place the emphasis of an exchange of intangible benefits will depend on the specific facts, any statutes and statutory purposes involved, and the broadness of the definitions considered. If no emphasis is to be placed on the value of the training then there is no benefit flowing to the child that can be considered analagous to traditional forms of compensation to employees. Without a statute requiring liberal

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1. It should be noted that the Missouri statute involved in this case differs from the Oregon statute in that where the two statutes are similar is that one furnishes services to an employer, but that Oregon's statutory definition of workman adds the words "for a remuneration" ORS Section 656.002(21).
2. See text at footnote 5, page 51, supra.

construction of a broad definition to obtain a meritous social end, the lack of such an emphasis would not define a child in EBCE as an employee. Thus one who works for his own benefit, which is primarily learning experience and which is not of great value to those for whom his services are directed, is not likely to be considered an employee. Otherwise the mere benefits of learning, given general enough definitions regarding control of an employee, would automatically give rise to employment relationships.

The lack of a basic employer-employee relationship for EBCE students is, we believe, an advantage for developers of EBCE programs. The advantage lies in program developers not having to be concerned with administrative details of work permits, involvement of students under age 16, minimum wages, etc. However, that administrative advantage could serve to disadvantage students unless special care is taken that they not be exploited. The type and length of student placement and whether they serve to replace or supplant regular employees will likely determine whether they are being exploited.

Chapter V

EXPERIENCES WITH LEGAL ISSUES OF CURRENT EBCE PROGRAMS

Since the initial funding of the EBCE model programs, the four projects in Philadelphia; Charleston, West Virginia; Portland, Oregon; and Oakland, California have faced and resolved a variety of legal and regulatory issues. They have exercised care to function within education guidelines and codes of their respective states and have retained counsel to assist in the resolution of a variety of legal problems which have arisen. Additionally, prior to the actual program operations of the EBCE projects, feasibility studies were conducted to examine potential legal issues which might arise. These early studies provided both direction and resources upon which subsequent decisions in model development could be based.

In the conduct of the present study, the feasibility studies were reviewed, and the examination of actual problems and methods of resolution was derived, in part, from these early, tentative studies. Discussions were held with project staff of each of the four sites who were familiar with activities from project onset. Inquiries were conducted with operating program personnel since they had the most direct concern with legal issues during the period when the prototype was being set up and implemented. Results of our investigation are reviewed topically, and show differential problems and concerns across the four sites.

A. Organizational Patterns of the EBCE Projects

One of the key factors in the kinds of legal issues that arose was the organizational form which the projects adopted. Whether formed as a private school or an adjunct or affiliate to an existing public school program was a primary reason they approached developmental problems from differing orientations.

RBS

The only project which specifically formed as a private school was the RBS Academy for Career Education in Philadelphia. The decision to organize as a private school required that RBS obtain a license from the Private School Division of Pennsylvania. At least two other options were available including seeking operating permission as an experimental school or combining in an adjunct relationship with the local public schools. The form chosen was felt to be more consistent with the EBCE concept of placing governance in the hands of employer representatives. A private, separate, governing board was formed which had policy making and ultimate program control. License application was submitted to a local division and then went to the state board which granted a license to operate a private school in Pennsylvania. The Private School Division is responsible for visitation and monitoring of schools they license and an annual report had to be submitted to them which included a financial statement. Among the reasons for the decision to form as a private academy, RBS listed the following:

1. As a public school or in an adjunct relationship, they may have been expected to keep calendar and hours similar to

the public schools. But while the public schools are in session 5½ hours per day, the EBCE program expected 6½ hours or more.

2. Relationship with the public schools would have increased problems in teacher employment since many teachers move out of the system each year.

3. Experimental status presents more problems in transfer of credits if a student leaves to return to a regular school program.

After one year of operation, RBS significantly changed the EBCE governance structure and chose, in its second operational year, to affiliate with the public school system. The turnabout seems based on two issues. Funding was first and foremost, according to the project director, since no private funding effort appeared likely to sustain the program over time. A second reason was the unique governance arrangement of the Academy. A contract between NIE and RBS required that RBS was responsible for all terms of the agreement. Yet the Academy board had policy control. While no major differences were encountered in the first year, conflict could have arisen if the board's decisions were not within the contractual terms. In such a situation, the prime contractor, in this case RBS, must retain the controlling voice.

A unique consideration in RBS' early decision to form the Academy was the unusual home rule charter status of the Philadelphia schools. While the charter does not allow the district to operate in variance with state regulations, it is not possible for the state to reorganize or assume control of a district which is in violation of state codes where a home rule charter is held. The Philadelphia schools have a rather broad autonomy and technically may have exercised that control over the EBCE program. In its formative stages, freedom for broad programming flexibility could have been reduced had such an affiliation occurred. Now that program development efforts are less crucial, that problem could be of reduced importance.

AEL

Appalachia Educational Laboratory elected to affiliate in Charleston with the Kanawha County Schools. In West Virginia, the county school systems exercise a wide range of authority and their endorsement of the EBCE program greatly facilitated AEL's ability to organize and become operational in a short period of time. Students in the AEL program remain on the registers of their regular schools and graduate from them. The EBCE project maintains attendance records and state aid is received by the local schools based on average daily attendance. Thus, the EBCE program represents an alternative educational opportunity for students in the Kanawha County Schools. The effect of this official sanction by an established school board is to reduce problems of teacher certification, student recruitment, and curriculum requirements. Though the project has not completed a documentation of its practices in granting course credits, it does provide a program consistent with state requirements. The county school board's approval of, and participation with, the EBCE program is tantamount to state approval.

An ingredient that expedited AEL program development was the early trust relationship which was established between the lab and the county school board. No formal contractual agreement or specification of the working relationship exists. The EBCE program reviews its operational plans with the county superintendent and has kept him regularly apprised of program activities. These reports are made available to the county school board. The credibility of the program with local educational officers was also enhanced by support of several prominent community leaders. According to the project director, this feeling of mutual trust and respect works especially well to form a base of program support in relatively small, provincial locations.

FWL

Far West Laboratory, in organizing a pilot EBCE program, entered into a formal agreement with the Oakland Public Schools (see Appendix B). The agreement places the Far West School in an adjunct relationship to the public school system. Students in the EBCE program are carried on the rolls of their previous high schools and graduate from them.

It was expected that during the calendar year 1973 the Far West EBCE program would be turned over to an organization of public and private employers, but that strategy did not materialize. Thus, in the 1973-74 school year, Far West Laboratory continues to operate the program in an adjunct relationship which requires that it develop and operate an individualized, career centered curriculum in accordance with curriculum requirements and education codes of

California. The Oakland Schools formally recognize the Far West School as an alternative school within their system. They place a member on the EBCE Board and award diplomas to students who complete their high school education. Where waivers of state regulations are necessary, the Oakland schools join with the Far West School in seeking such variances from the state. Under the original agreement, the EBCE program was expected to achieve the status of an experimental school.

NREL

The fourth EBCE project is under contract to the Northwest Regional Educational Laboratory (NREL) at Portland, Oregon. The Lab, in turn, subcontracts with a private corporation called Community Experience for Career Education, Inc. $(CE)_2$. Employers, students, union representatives and parents are included on the board of $(CE)_2$ which exercises control over the daily operation of the EBCE program. Students for the program come from the Tigard Public Schools and graduate from that high school. Curriculum development work and evaluation of the Tigard program which were contractual requirements of NIE remained as responsibilities of the Lab and its EBCE project staff.

The subcontractual arrangement formed in the first year of operation has basically been maintained in the second year. The $(CE)_2$ board has agreed to conduct an instructional program which is designed to achieve a list of specified objectives, provide materials, staff, and resource people for the learning center, and select a certain number of students for September entry into the EBCE program. $(CE)_2$ guarantees access to the Lab through the project director to personnel records and documents for the purpose of collecting program data. They assist in data collection and establish policies and procedures for administering the program. In order to avoid conflict with the terms of the prime contract, a special clause has been inserted which requires that policies and procedures adopted not be in violation of the contractual relationship between NIE and NREL.

The Lab has another subcontract with the Tigard School District for several specific functions. The principal activity calls for the Lab's EBCE evaluation staff to identify and assess a control group of Tigard students, so that they may serve as a comparison to the EBCE participants. A secondary activity is the coordination of special arrangements required between Tigard and $(CE)_2$. In the development of control group information, the Lab is testing thee different samples: (1) Students who applied the first year but weren't admitted, (2) Students who are in a regular work study program, and (3) Students randomly selected from the entire Tigard student body.

The third side of a triangular relationship involves $(CE)_2$ and the Tigard Schools. Between them they have an informal, but written agreement which was described as "not a legal contract". The agreement requires $(CE)_2$ to meet those conditions necessary so that students can receive the necessary instruction that meets state requirements and leads to the granting of a diploma. In addition, $(CE)_2$ must maintain records of progress so that any student transferring to another school will not lose credit or be disadvantaged by the transfer.

The EBCE program at Tigard is considered under Oregon regulations as a pilot experimental program which allows waivers of existing regulations to be obtained. This status is granted for a short range program and could be used by other Oregon EBCE developers in the first year or two of program operations. In the long range, Oregon's newly adopted graduation and certification requirements give promise of providing necessary state recognition without waivers and special accommodations for each new EBCE program. Those guidelines allow for granting of credit on the basis of demonstrated competence and for crediting experiences in the community.

B. Student-Employer Liability

The basic issues of liability were discussed in Chapter 3 (see page 35). The question of student protection in the event of injury on an employer site is one that each of the four sites has addressed. Another aspect of the issue is the employer's responsibility in the event a student causes personal or property damage on an employer site. A related potential concern is the school's liability for students while in transit to and from school, while at the learning center, and while moving from the learning center to an employer site.

AEL

Each EBCE program has worked to provide adequate protection for the student and the employer when job exploration is underway at the work site. But because the kinds of insurance issues involved were basically new considerations for insurance companies, much time and effort in the first year was devoted to this problem. AEL rated this issue of highest legal importance yet the most difficult to obtain information for decision-making. The AEL legal consultant worked for nearly a year before insurance coverage was obtained which provided what they believe to be adequate protection for all participants (students, staff, employers) in the program. In the first program year, AEL provided health insurance coverage for students equal to the policy carried by the Kanawha County Board of Education, but this policy did not cover students in their own automobiles. In the first year, there were no claims for liability, due in part to "a certain air of precaution (that) was taken throughout the year to rectify any potential hazard." In July, 1973, AEL agreed to a new Broad Form Blanket Contractual Liability Coverage. That policy permits AEL to attach a "Hold Harmless" endorsement to a contractual agreement with an employer, thus requiring damage or injury claims to be resolved by the EBCE program's insurer and not by the employer's company. While the "Hold Harmless" clause is not viewed as a device to attract and solicit new employer-participants into the program, it is said to provide a positive measure of coverage for an employer who may be important to have in the program, but who is reluctant to have students on site without sufficient insurance protection. The agreement would state that "Appalachia Educational Laboratory accepts liability if personal injury or property damage is incurred at the 'employer' site during the course of students being on the premises."[1] In addition, the new coverage raised the liability amount to $500,000 with a $200,000 property damage amount. It was felt that the coverage obtained by AEL could serve as a guideline for other EBCE developers and would have national applicability.

NREL

The problem of liability coverage for students was of special concern to NREL because so many of its employers were small businessmen who had limited experience with student learners on site. It should be noted that laws in virtually every state place liability on businesses if they are shown to be responsible for injuries to clients and employees. The status of a student learner has not been conclusively established for purposes of liability coverage. Large businesses, however, have more active experience with such problems and are usually well aware of the range of their responsibilities. NREL needed a ready and appropriate response to employers who raised the issue as a condition of participating in the EBCE program. They obtained a form of coverage which indemnifies or reimburses an employer in the event of a damage award resulting from an EBCE student's action or negligence. This policy is executed with every employer as a part of their agreement with NREL before a student goes on site. This situation differs slightly from the case of AEL which extends its "Hold Harmless" clause only where an employer requests such protection as a condition of his participation.

[1] Letter from J. Crawford Goldman, Attorney, to Dr. Harold Henderson, EBCE Project Director, July 24, 1973.

Oregon law specifically empowers nonprofit corporations to make contracts and indemnify, thus allowing $(CE)_2$ to carry such insurance. In the long range, however, an amendment to current statutes may be necessary "to empower school districts to insure students against injuries incurred at employer learning sites and to indemnify employers for damages resulting from actions by students on-site."[1]

RBS

The procedure initially considered by RBS was to have accident claims covered by insurance that employers almost always carried. If additional coverage were required by the employer, the lab would have reimbursed the employer for the added premium. However, after a careful reexamination, RBS chose to secure its own liability insurance for the Academy and medical/accident insurance for the Academy's students.

FWL

Far West Lab had a three-fold concern in the area of liability and student insurance coverage:

1. Protection for students in the case of accident or injury,
2. Protection for employers in cases where students are injured or cause injury or damage on a job site,

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[1] Analysis of Legal Issues Encountered During First Year of Pilot Implementation, Northwest Regional Education Laboratory, September, 1973. p. 18.

3. Protection for Resource Persons (RPs) who work with students. Though other EBCE programs utilize employer representatives, Far West Lab is unique in both the extent and manner in which they use RPs with students.

In order to provide insurance protection for students, a standard student accidental death and dismemberment policy has been purchased. Each student is provided coverage on a 24-hour-per-day period, rather than for just during school hours, since it seemed likely that EBCE participation would extend beyond the typical eight to four o'clock school day. The additional cost of 24-hour coverage was only about 20% more than coverage during school hours.

Under the FWL's standard insurance coverage, employer liability in the case of student injury may be relieved by attachment of a Hold Harmless agreement with an employer. As in the case of AEL, this rider is not offered as an inducement to employers to participate in the EBCE program, but may be offered to any employer who is reluctant to have students in a "hands on" work experience program for fear of incurring added liability. The insurance rider may be made available, when deemed necessary, to any employer who participates in a program operated by FWL including, of course, EBCE. The only requirement to the Lab in extending the Hold Harmless rider to employers is that they must inform their insurance carrier so that the company is aware of who is being covered.

Resource Persons are eligible for Workman's Compensation should they incur injury as a result of their volunteer participation in the program. Because they do not receive compensation for the time spent working with students, FWL keeps a log on the time RPs spend in volunteer service. A "paper" wage of $5 per hour is assigned and Workman's Compensation rates are based on this pay scale. In California, Workman's Compensation is arranged through a private insurer and does not function through a single state-sponsored fund. The actual premium paid by FWL for Workman's Compensation coverage is calculated on a post-audit basis by determining the number of hours worked by RPs at the applicable hourly paper rate (currently $5 per hour).

C. Workman's Compensation

Laws related to Workman's Compensation exist in every state, but workers covered under the law vary. There has been a tendency to extend the provisions of the law to workers previously excluded from Workman's Compensation coverage. While specific rulings would be necessary to decide if a worker were entitled to compensation in a given instance, it should be noted that the worker's employee or salary status is not the only requisite condition. In Oregon, for example, a learner could be eligible for benefits even though he were not a salaried employee. The school district is required to furnish the Oregon State Accident Insurance Fund with a list of the names of those enrolled in the work experience program. Only persons whose names are on the listing may be entitled to benefits for personal injury by accident.[1] A system of estimating how much the student learner would have earned had he been paid is used to establish the rate of compensation. Two of the states we examined, West Virginia and Pennsylvania, specifically disallow Workman's Compensation benefits unless a person is a salaried employee. A common element of all EBCE programs is that students are not reimbursed for their work or related employer site activities.

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[1] Oregon Revised Statutes, Section 656.033 (2), (4).

D. Student Reimbursement

The issue of student reimbursement, discussed above as it relates to liability and Workmen's Compensation, has been of specific interest to each of the EBCE sites. As noted, each maintains a policy that students may not be paid while participating in the EBCE program. Several reasons were cited for the policy including:

1. The educational status changes if a student is paid. Instead of being responsible to the school for certain educational experiences, the first obligation is to the employer whose primary concern for a paid worker is his productivity.
2. Unless the EBCE program wishes to have its students classified as employees, federal regulations forbid the payment of salaries. Payment of wages is considered prima-facie evidence of an "employee" status.[1]
3. EBCE programs are concerned that the student regards the employer site experience as a learning situation and the employer's contribution as an assistance to his career preparation. It is felt that this relationship would be lost and respect for the employer's contribution would be diminished.

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[1] See discussion of "employee" status, Chapter IV, p. 51ff.

Despite the general adherence to the policy of non-payment of students, application of the policy varies. At RBS, students may not work for pay and receive school credit at the same time. However, at times outside his required obligation to the EBCE program, a student may work for wages, occasionally on the same employer site. Such employment is not encouraged. FWL allows students to be compensated for work but only on their own time. In a few instances students were reported to have entered the program with jobs which were modified to broader exploration on the same site. AEL indicated that a few students held jobs for pay outside normal school hours. It was reported that labor union representatives were especially concerned about student reimbursement, suggesting that were students paid they may be replacing existing labor or eliminating the need for employers to hire other (such as union) employees.

The most restrictive policy regarding student reimbursement was expressed by NREL. An instance arose where a student worked each day for a couple of hours on a job site as a salaried employee. Then, without changing duties, the student continued in a student learner classification. The separation of duties was artificial and the student's period of obligation to the employer vs. obligation to the EBCE program was not clearly delineated. Instances of this sort led to establishment of a policy which states that during the calendar period that students are assigned to an employer site, they may not work there for pay. They may work there prior to the time they are assigned by EBCE, and afterward, but during the time they participate for school credit, they can't work for pay on that location.

E. Child Labor Laws

As was noted in Chapter IV, Labor Issues in Experience Based C.E. Programs, one of the key issues regarding child labor law application to EBCE programs is the student's status. As an employee, he is subject to all of the terms and restrictions of the Fair Labor Standards Act (FLSA). As a student learner, there is no present set of codes to regulate his activity on an employer site. However, if the educational program requires "hands-on" experience and the production of goods and services while in a learner status, it is apparent that certain site restrictions would be applicable. Students could not work in areas classified as hazardous occupations, including many machine operation tasks, mining, some assembly tasks, and many areas of construction work.

NREL

It has been determined by NREL that EBCE participants are "learners" and not trainees or employees when they are on an employer site. Therefore, the FLSA provisions requiring minimum wages, employment certificates, and limits on number of hours worked per day and per week are not applicable as they would be to "workers" under the statutory definition. NREL suggests the need to further define in the statutes the specific experiences in which students may be engaged at employer sites without being classified as "working". Since no remuneration is received by learners, work permits from the school to the employer are not required under law.

Oregon statutes limit the hours children under 16 years of age may work each day and in one week and stipulate hours between which they may be on the job. NREL has scheduled employer experiences within specified times and within the daily and weekly time limits. For students under 14 years of age, no employment is allowable when schools are in session. However, since the current EBCE program involved only juniors and seniors in high school, this presented no problem. Further, if students participated in EBCE exploratory experiences as "learners", they would not be performing work within the statutory definition and would not be subject to the code provisions for under 14 "employees".

FWL

Far West Lab did not consider operating within the Child Labor Law restrictions a significant issue. They were able to work within the statute limitations in placement of students on employment sites. They noted that it was easier to do this in a community like Oakland because of the job market in a wide range of white collar and light industry settings. Where heavy manufacturing represents the predominant labor market, it was felt that EBCE programs may have a more difficult time acquiring appropriate employer sites.

AEL

The pertinent child labor laws, as set out in federal and West Virginia law, focused primarily on hazardous occupations such as mining, meat cutting, steel production, timbering, and areas which have an inherent danger with minimal protection for the worker.

It was with regard to these kinds of provisions of child labor law that AEL was most concerned and exercised much caution. They felt it was an important responsibility of employer liaison personnel to examine each job site and determine if it provided adequate protection for the health and safety of students. The AEL staff member responsible for liaison with employers researched the Occupational Safety and Health Act (OSHA) and appraised employer sites to determine if they met OSHA provisions. Usually it was found that employers were aware of and anxious to comply with OSHA. The Parks and Recreation Department of Kanawha County, for example, wanted to cooperate with the EBCE program, but would not allow students to work with lawnmovers and other power equipment used in maintenance of county-owned parks and golf courses.

AEL corresponded with the Employment Standards Administration of the U.S. Department of Labor in the spring of 1972 requesting an opinion as to whether the EBCE program would be in violation of the Fair Labor Standards Act (FLSA). AEL's student population has been primarily of twelfth grade age, and the basic question was whether these students were employees within the terms of FLSA. The opinion, written by the regional attorney for the Department of Labor, stated that if all of the following criteria applied, the students would not be employees with the meaning of the FLSA:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the trainees or students;
3. The trainees or students do not displace regular employees, but work under their close observation;

4. The employer that provides the training derives no immediate advantage from the activities of the trainees or students, and on occasion his operations may actually be impeded;

5. The trainees or students are not necessarily entitled to a job at the conclusion of the training period; and,

6. The employer and the trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.[1]

The opinion further stated that as long as students continue to rotate to various job settings without settling on one job area or working "an excessive length of time at one establishment in one occupation," they would meet the above criteria and not be considered as employees. However, if the student stayed for a long time in a job he liked, no longer rotated to explore other occupational fields, and produced goods or services which had an immediate advantage to the employer, he might be regarded as an employee after a "reasonable initial period" on that site.

The language of the letter of opinion left at least one major unanswered question. What is "an excessive length of time at one establishment in one occupation" and what constitutes a "reasonable initial period"? A subsequent opinion was obtained from the area Employment Standards Administration, Wage and Hour Division, of the Department of Labor, stating that "After a student has been with an employer for 13 weeks, Wage-Hour will consider an employment relationship to exist."[2] AEL has subsequently planned its program

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1. Letter from Marvin Tincher, Regional Attorney for the Department of Labor, to J.C. Goldman, Legal Counsel for AEL, July 7, 1972.
2. Letter from Bill Belt, Area Director, Wage and Hour Division, U.S. Department of Labor to J.C. Goldman, July 12, 1972.

around these guidelines and kept all EBCE explorative activities within the 13 week maximum.

It should be noted that both of the above opinions are only that. While they carry the force of law until and unless challenged, it is possible that they may not hold up to a legal test. The opinions are based on an interpretation of the FLSA and on case law which may or may not be applicable to the test of employer-employee relationship. But these criteria are based on considered legal opinion from counsel representing the Department of Labor. In the absence of other legal advice to the contrary, the criteria should serve as a useful guideline to EBCE developers.

RBS

A question related to the status of students as employees was addressed by the RBS legal counsel to the Pennsylvania Department of Labor. RBS specifically asked if employment certificates or permits were required for EBCE participants. The response by the Director of the Bureau of Labor Standards stated that if students are not employees of the establishments they visit for observation and learning, the activity would not be classified as employment and employment certificates would not be necessary.[1]

While no unusual problems of compliance with child labor laws were cited by the RBS staff, it was noted that several job sites had to be rejected because of regulations concerning work around certain machinery. An example was the automotive parking lot of Sears, Roebuck and Company where students would have to park cars.

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[1] Letter from Kay Clarke, Director, Bureau of Labor Standards, to Henry Stein, RBS Legal Counsel, July 10, 1972.

F. Teacher Certification

The legal issues relating to certification of teachers and other personnel for employment contained in the educational process have been discussed in Chapter III, page 39 of this paper. The primary questions relate to numbers and duties of certified personnel necessary to [illegible] several states' guidelines, and secondly, to the certificated status of employer-site personnel with instructional responsibilities. Certain pressures have been encountered in some of the EBCE sites not from the state education department, but from organized teachers' unions. These problems and solutions to the extent they have been found for each of the four sites are discussed below.

FWL

The state code of California specifies that a person who has control and supervision of students must be credentialed according to the guidelines established by the State Board of Education. Recently, the Fisher Bill has been passed permitting credentialing in terms of competencies. However, because tests and measurements appropriate to these competencies have not yet been developed, this legislation has had no impact on the EBCE program.

At this time not all of the FWL staff is credentialed. This has not been a particular problem in relation to the state department, but two major concerns have been expressed by the project staff. First, the issue of liability. The FWL staff expressed fear that if a participant were injured while under the supervision of non-credentialed personnel, and if the Oakland Public

Schools were sued and found liable, continuation of the project would be threatened.

The second major issue has to do with AFT pressure. Certain subjects required by the State Board are included in the FWL curriculum. However, should certified teachers in these subject areas be without employment, the chances are rather large that the teachers union might bring pressure on the project to replace non-certified staff with certified teachers. One of the ways in which this may occur would be a rigid examination of the curriculum to be sure it meets all of the state guidelines. This possibility seems especially strong in the area of physical education, given that the state specifies that 400 minutes of physical education must be provided in ten days, that the site must have outdoor facilities, and because the physical education teachers lobby is very strong.

These potential problems have not yet occurred in the Far West project, and no specific solutions have been devised at this time. Concerns about them were expressed by FWL staff.

NREL

Certification is not a major problem in the Oregon project for several reasons. First, most of the project staff is certified and these certified personnel have primary control of the program. These conditions meet state requirements. Secondly, the project is currently covered under special provisions for pilot programs. In Oregon, pilot programs can guarantee diplomas. Third, recent changes in the school code require career education for all students with a variety of options. Finally, a specific provision in the code outlines that a school district may make available to its students "extended educational experiences" such as "work experience programs conducted on a contractual basis with individual employers or employer groups."

One potential problem may exist should the school district or the corporation have to reimburse employers for instructional time provided, since state funds will not support any non-certified personnel. This has not been a problem to date since the employers pay for employee time and because the project staff members are certified. Should this situation change, special certification standards and procedures may have to be adopted by the Teacher Standards and Practices Commission. The latter is a new agency which has assumed the certification procedures previously held by the State Board of Education. The project expects to remain in close contact with any policy changes instituted by this commission.

RBS

Currently certification is not a problem for the Philadelphia project. This EBCE program now has, with the help of some specific exemptions, enough certified personnel to satisfy state requirements. It is a potential problem area if either of two situations occur. One, if costs force the school to hire more uncertified personnel, thus reducing the ratio below minimum acceptable standards, or two, if the school becomes completely public and the teachers' union forces the project to use all certified personnel. Solutions to these potential problems have not been devised.

AEL

Certification is not a problem in the Charleston model for three reasons. First, because AEL works closely with the Kanawha County School Board and therefore students have not severed all ties. Secondly, because during the initial review of the project plans by the state and local boards, it was specified that any noncertified staff hired by the project would have the "educational ability" necessary to meet certification requirements. Therefore, all staff members are either certified or certifiable. Finally, while a teachers' union might be able to pressure the project for use of uncertified personnel, this will probably not occur because West Virginia law prohibits public employees, including teachers, from organizing into unions.

G. Curriculum

As was observed in the discussion of legal implications relating to curriculum (see page 23), local school districts generally have considerable freedom to determine curriculum within the broad guidelines established by the state eeucational agencies. The extent to which state and/or local guidelines impact the EBCE projects varies, both as a function of the relationship of the project with the local district, and as a function of the specificity and compatibility of the guidelines with the project. All of the projects have had to deal with these guidelines in order to meet the NIE guidelines that each student in the projects shall become eligible to receive a diploma. The problems relating to curriculum encountered by the four EBCE sites are discussed individually below.

FWL

The California state guidelines specify that each student must have educational experiences in the Constitution, American Institutions and Ideals, California history, safety and accident prevention, health care and drug abuse sometime throughout his years in school. In high school each student must receive instruction in English, American history and government, math, science and 400 minutes of physical education, within each ten days, to qualify for a diploma. Additionally, each school must provide one course of study designated as college preparatory. The Far West school provides these courses on site as well as the career education experiences in the field. Students have also taken courses not available within the school from the local junior college with the approval of the home school principal. Each student receives his diploma from his home school with the approval of the school principal rather than from the Oakland Public School district or from the Far West school as an adjunct to the Oakland district.

This situation is viewed as potentially troublesome by some members of the project staff. It is felt that some of the content in the courses might not meet accreditation standards, especially in terms of theoretical concepts. Problems also exist in supplying proper physical education Thus far the project has circumvented some of the requirements by supplying instruction in areas of interest to students such as Karate and modern dance, and by providing passes to the YMCA. Additionally, the project has been forced to continue use of the Oakland district's driver training capability although driver education is taught on site. In order to meet the possible pressures applied by certain interest groups, such as the CFT and technical education schools, the project has attempted to get waivers of the requirements in three areas (including physical education) from the State Board. Thus far no action has been taken on their request. Some project staff members are not optimistic about this possibility. Other alternative solutions have not been developed.

The problem of providing courses with content sufficient for accreditation is seen as especially important in light of local school principal's acceptance and in terms of the students' acceptance into colleges.

NREL

In short range operations, the Oregon project has little difficulty with curriculum regulations. This is primarily as a result of their special status as an experimental program and because of their close relationship with Tigard High School with which students maintain some contact (although the non-profit corporation provides subject matter instruction.) As a result of this relationship students may transfer back into the regular system at any time and are also guaranteed a diploma. Recent legislation is also advantageous to the project in that it provides (1) that students can receive extended educational experiences (described in the section dealing with certification); (2) that new graduation requirements can grant credit for competencies developed in experiences in the community; and (3) that all students should have career education. One of the optional plans suggested is very similar to the EBCE program.

The new state guidelines accommodate an EBCE program as it has been formulated to date. NREL is making a continuing effort to relate and to tailor current experimental program requirements to those guidelines.

RBS

In the past the Philadelphia model provided instruction to students from a number of schools. This year incoming students will be from only one school. These home schools grant the diplomas on the basis of the RBS credit count which is drawn from the Carnegie model specified in the Pennsylvania Uniform Curriculum Code. A student involved in the project must agree to work for a high school diploma and the academy agrees to supply the student with instruction in the necessary areas with special concentration on the student's needs, for example, intensive work in basic skills. This project has not chosen to be classified as an experimental school because state law prohibits the granting of diplomas by such schools. The project has not applied for accreditation because of of the length of the process and because the unique features of the program may not allow for this. A survey of college admissions officers revealed that this should not be a problem for students seeking college acceptance. The state has no mandated list of textbooks.

AEL

Course requirements for students participating in the Charleston project are set out in the Kanawha County Board manual. These requirements include math, English, physical education and other standard courses. Students can return to the regular system at any time without penalty. The project has been given considerable latitude by the Board in meeting these requirements. The project tracks, verifies, and validates student experiences to guarantee completion of the state and local requirements.

Although it has not been a problem thus far, the project perceives a need to develop some specific criteria for the assignment of credit. Those criteria should include a statement of the learner's goals and objective for each experience site as well as a systematic evaluation plan designed to minimize subjectivity in assigning grades and credits.

Many problems in establishment of an EBCE program are of a technical nature and are imposed as a result of state and municipal codes and ordinances. Exemplary of such issues are transportation of students, physical facilities, student lunch programs, and student records. At least one of the current programs mentioned these as considerations during the program's set-up and first year of operation.

The fact that only one or two labs specifically commented on these four areas does not imply that the issue was limited to one or two sites. For example, the confidentiality of student records is not only an essential of many school programs, but may very well relate to constitutional concerns and statutory provisions. The following descriptions merely indicate that certain labs commented on these issues as legal considerations that they specifically addressed and which they reported to ARIES researchers.

H. Transportation

RBS

A 1973 law in Pennsylvania makes the school responsible for transportation within 10 miles of the school. This includes extracurricular activities as well as regular school attendance. In the 1972-73 school year participants in the Academy were given tokens for use on the city's mass transit system. At times when students used private cars, RBS informed parents that the student was responsible. Tokens only will be used in 1973-74.

AEL

Students can receive transportation to and from the program each day as well as to each of the job exploration sites. AEL has two station wagons and chauffeurs to drive students. AEL is now working with the Kanawha Valley Regional Transit Authority to contract for additional services for its students. If the procedure is successfully worked out, EBCE students could ride any place served by the Authority without direct payment of money for each ride. The student would show only an identification card, which the EBCE program would purchase on a flat fee basis per identification card. It was hoped that an arrangement with the Authority could be consummated before the beginning of the 1973-74 school year. AEL staff felt that such a plan presented the safest and most simple way to transport students without hiring additional staff and leasing more vehicles. Lab provision of transportation is considered preferable to having students use their own cars.

NREL

State aid for pupil transportation is available to Oregon school districts which provide transportation to and from school.[1] Students at the program in Tigard regularly ride regular school buses to the EBCE learning center, which is within walking distance of Tigard High School.

Other transportation is provided by the EBCE program to carry students to employer sites, but costs for this service are derived from federal funding of the program. The question remains whether

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1. ORS 327.035.

the statute would allow public funds to be used for transportation to employer sites within the school day. On the one hand, it could be argued that "the school" is in one specific location and transportation aid to and from that center is the basic intent of the law. Conversely, "the school" could be defined as the place where a learning program operates, including that which occurs at an employer site. Under that interpretation, transportation to and from an employer site would be analogous to travel to and from school. A test of the statute would probably be necessary to establish the basis for state aid if other public schools established an EBCE program, but thus far that has not been necessary.

FWL

While it relies largely on public transportation for its students, FWL mentioned one issue that was unique among the four programs. In its use of Resource Persons, there were occasions where the RP might transport students in his private automobile. Since FWL's policy required that only insured drivers provide such transportation, a Certificate of Insurance was requested from each RP certifying that he carried California state minimum public liability and personal damage insurance along with $2,500 medical payment coverage. Such coverage is held by virtually every automobile owner and required no additional cost to the RP.

I. Physical Facilities

FWL

Like most of the other programs, the physical facilities for a school or learning center had to meet certain basic health and safety requirements. An additional California requirement of note are the Field Act provisions. The Field Act specifies that any school housing minors must meet minimum safety requirements in the event of earthquakes. Most schools constructed since passage of the act in the 1940's meet the specifications, since failure to do so makes school board members individually responsible should injury result from earthquake damage to a school not meeting the code.

The question for an EBCE program in California relates not only to the structure in which the learning center is housed, but potentially to every employer site should it be determined that these sites are "schools" within the context of the EBCE programs. FWL has not resolved this issue but held it to be an important consideration in extension of the EBCE model in California.

AEL

Space was leased in a building, owned by Morris Harvey College. which previously was a grade school. The school site arrangements involved basic real estate lease formulation, preparation of contracts relating to necessary remodeling, and establishment of terms for maintenance. The site is inexpensive as compared to office space and similar facilities in the Charleston area, and provides ample parking for staff. As the project adds students, there could be a parking problem if more students used their private cars. This was a reason for seeking an agreement with the local transit authority for student transportation.

RBS

Not only did RBS have to satisfy state requirements for school physical facilities, but local codes also had to be met. Its choice of space in an office building which had previously housed a business school was approved by local fire inspectors. RBS set up a list of specifications that included square footage space per student and conformity to regulations regarding safe exits and sufficient lavatory facilities. These considerations had to be properly met in order to get a license to operate in Philadelphia.

NREL

This program leased space in a professional building which was under construction at the time the program was being initiated. The Lab brought in state education department personnel to inspect the property and recommend any necessary modifications. NREL was able to tailor the space to its program needs without having to adapt to an existing facility.

J. School Lunch

AEL

All employer sites do not have lunch facilities so commercial sites must sometimes be used. Morris Harvey College allows AEL students to use cafeteria facilities by means of a student identification card.

K. Student Records

NREL

Oregon law requires that precautions be taken to preserve the confidentiality of student records. Thus the NREL project had to establish policies and procedures for management and access to such records. Other labs may have such concerns but only NREL mentioned it as a legal issue which they addressed in program development. (Most states have policies or guidelines to govern accessibility to student records.)

Chapter VI

SUMMARY AND CONCLUSIONS

A. Summary

This study of legal issues in the development of Experience Based Career Education programs has included a review of administrative responses to a range of regulatory, as well as statutory, considerations. We have examined those issues to which the current EBCE programs responded by establishing policies and procedures to avoid direct legal contests. Further, we have attempted to provide a basis upon which NIE could make decisions regarding the nature of efforts to expand the EBCE concept in the future.

The first chapter summarized several advantages and disadvantages of private sector sponsorship of EBCE programs. Among advantages, the following were noted:

1. Freer and more flexible use of non-certified instructional staff.
2. Wider latitude in curriculum offerings, including the opportunity to offer specialized, single purpose training.
3. Power to make contracts and assume levels of indebtedness where added facilities are needed. (Public schools are more stringently regulated by the state)

Among the disadvantages of private sector sponsorship, we noted:

1. The period required to obtain accreditation is longer than if the program affiliated with an accredited public school.
2. Long-term funding.

Because of the importance of the funding issue to long-term operation of an EBCE program we reviewed in Chapter II the state regulatory powers for school financing. We observed that the real locus of control for schools rests with the source of financing and that control has been largely vested in state legislatures. Recent court decisions limiting the ability of the state to participate in private school financial support were cited. Though it was noted that the states have paid private schools for services to handicapped children, the basis for such assistance was to serve a special classification of children in a welfare rather than educational purpose. Voucher systems, as a mechanism for providing state resources to private sector programs, are regarded as a tentative, experimental effort from which it may be too early to project an extension to private EBCE programs.

In Chapter II, court and legislative efforts to equalize educational financing were reviewed. The result of such efforts appeared to be leading toward fuller (perhaps full) state funding of education as recommeded by the President's Commission on School Finance. Equalization of school funding through fuller legislative control will place the state (and state departments of education) in a more pre-eminent position with regard to future curriculum development and expansion of services. Chapter II concluded by noting the potential difficulty of obtaining legislation which would allow public funding for private sector EBCE programs. In the absence of long-range funding resources, public school sponsorship of career education programs appeared to be the most feasible course to pursue. No legal restrictions were noted that would preclude various forms of private sector sponsorship, but the probable lack of long range financing may be a serious limitation to such sponsorship.

The legal issues discussed in Chapters III and IV were identified as concerns by the personnel of current EBCE projects, by early feasibility studies of the "employer based" model, and by our own research. In Chapter III we identified issues of concern to administrators, to students, and to instructional staff.

Compulsory education or attendance laws were seen as critical in the development of any new program, since they not only specified ages of children to be served, but also served as the basis upon which other state regulations were applied. Without the existence of compulsory attendance laws, instructional programs could be designed without regard to state curricular requirements, staff certification, and a host of other considerations. Other key administrative considerations included meeting curricular requirements of the state and obtaining a license to operate if formed as a private school. The fundamental authority of the state to select a system of instruction or course of study was observed. As a practical matter, states tend to delegate such authority to local districts. We noted that some states allow waivers from curricular and personnel requirements for innovative, experimental programs. State regulatory power over curriculum matters was observed also in such areas as specification of textbooks, length of school term, and observances of special events of state or national significance.

While the state or local district holds the authority to design and prescribe curriculum, the student consumer's rights and responsibilities cannot be overlooked. Case law was cited which held that students should be allowed to make a reasonable selection of listed offerings, but another case had ruled that selection by the school is a reasonable regulation binding on parent and pupil. Our review noted that, where the parental and school authority conflict, parental rights to direct a child's studies may take precedence.

The schools's authority to suspend, dismiss, or expell a student has been upheld where the student willfully disobeys reasonable rules and regulations. However it was noted that the rules must be fairly and uniformly applied. Schools have been increasingly called upon to demonstrate how student actions that are in variance with existing rules actually interfere with instructional processes or school management.

A major concern to current EBCE developers has been the protection of students from injury and of employers from liability for student injury or damage. A great deal of legal activity in the first year was devoted to adequately insuring program participants. We noted that any private sectory sponsorship would have to carefully consider ways to provide positive protection to those in an EBCE program. Where public school governance of a program existed, in many states the school would be immune from liability under the doctrine of sovereign immunity. However, the relatively small cost of providing adequate insurance coverage suggests that, where permitted, public schools purchase appropriate insurance.

Transportation was a concern both for administrators and students. One of the principal questions in an EBCE program was whether transportation costs to and from an employer site would be borne by the sponsoring agency as is the case in the present model programs. It was felt that such transportation could be partially state supported where states now provide transportation reimbursement. Transportation to and from employer sites was viewed as an integral part of the EBCE program.

Teacher certification was seen as an important concern to new program developers, for while they might obtain provisional certificates or waivers from existing regulations during the early formulative stages of the program, ultimately this is an issue which must be confronted. Some general considerations in teacher certification were listed, and we discussed the current trend toward competency or performance based certification.

Chapter IV focused on the application of the Fair Labor Standards Act and on criteria used to determine if a minor was an employee when participating in an EBCE program. We attempted to illustrate the variety and vastness of the law and the necessity of examining EBCE programs with regard to each state, the age of the child, and the occupation contemplated. Child labor statutes from the U.S. Code and state codes were reviewed. We examined the basis upon which the regional attorney for the Department of Labor defined the employee status of EBCE participants. In essence, the analysis suggests that students are "learners" as opposed to "employees", but legal determination of such status appeared to rest primarily on the issue of remuneration. Without receipt of a wage or salary, and despite the fact that he was permitted to work on an employer site, the student would probably be considered a "learner". Throughout the review of labor issues, we noted that few illustrative examples actually involved minors, since it is only in recent years that various work experience programs have been instituted in many secondary schools. Few legal contests deriving from such programs have been brought to the courts.

Chapter V reviews the experiences of the four current EBCE model programs with regard to legal and regulatory issues which arose in their first operational year. Interviews with staff of the four models provided most of the information. In addition to examining specific legal or quasi-legal considerations, we described briefly the various organizational patterns followed in the formation of the four projects. The descriptions were included to illustrate, in part, the range of organizational strategies that could be used in future EBCE programs.

The issue of student-employer protection and liability was dealt with by every model program from the time of conceptualization.

Several labs rated it of highest legal importance and yet one of the most difficult on which to obtain information for decision making. At present, the problem appears to have been resolved by each lab to its satisfaction, and the coverages obtained probably have national applicability. A principal characteristic of their work has been to negotiate a "hold harmless" agreement with employers in order to diminish employer liability in case of an injury to the EBCE participant.

Experiences of the current programs with other issues such as workman's compensation, student reimbursement and child labor laws was described. The prevailing policy among the labs has been to prohibit the student from receiving remuneration for his participation on an employer site, and, consistent with our findings in Chapter IV, to categorize the student as a "learner". An important component of the labor laws is the exclusion of minors from a variety of hazardous occupations, some of which were noted. Age restriction for minors on employer sites has not been a general problem because most EBCE participants have been 16 years or older, but each lab has recognized the limitations related to dangerous occupations for their clients who are under 18 years of age.

Teacher certification and curriculum requirements of the state were administrative considerations in the formation of the current programs, and appear to be either satisfactorily resolved or of no major ongoning concern. While one lab saw the certification issue as potentially threatening, the general reaction was that it was not of consequence due to the care exercised in earlier program development and staff hiring. We noted that every state has its own set of curriculum requirements that necessitate a careful examination by any EBCE developer. Exemptions and waivers are often available for programs approved by the state as innovative or experimental.

A series of lesser issues, some of which were concerns expressed by only a single lab, were listed. They included transportation, physical facilities, school lunch programs, and access to and handling of student records.

B. Conclusions

1. The single most recurring issue encountered in this research may be best described by an analogy to the man who asked his good friend how to cure a case of bronchial pneumonia. While the friend knew of many home remedies and medicines, he realized that the best prescription was to advise his ailing friend to see a physician. Similarly, study of legal issues in career education can delineate and suggest reasonable courses of action and potential remedies. But the best prescription for any EBCE developer is that legal counsel be retained at a very early stage of program development. Legal counsel will not only provide assistance in resolving some issues that have been encountered in previous EBCE development, but will also be able to give advice relative to the unique characteristics of local ordinances and state statutes and codes. That recommendation was expressed by each of the present model directors.

2. Consistent with the previous point, we have noted that the extent of legal issues pertaining to establishment of an EBCE program is so vast that a major effort would be necessary to more fully examine even the high priority concerns across the nation. This conclusion is based largely on the primary authority of the states in matters of education and the diversity of regulations and guidelines that have been promulgated.

3. The limitations on states with regard to funding of private schools with public monies has led us to suggest that the best current option for providing long-range funding for EBCE programs is through public school sponsorship. We noted that there are advantages to private sector sponsorship and few legal barriers to such governance, but that funding problems may limit private sector EBCE development.

4. Current efforts to reduce reliance on real estate property tax for school financing and to reach toward fuller state funding of education seems likely to emphasize the state's future role in EBCE program development. For this reason, and also because of the cost and complexity of promoting the EBCE concept at a local district level, we suggest that CEP may wish to focus EBCE educational and promotional efforts on state departments of education.

5. When developing an EBCE program, administrators should adhere to compulsory attendance laws and should strongly consider:

a. Purchasing insurance coverage with a "hold harmless" clause available for employers.

b. Providing transportation (either directly or through payment of costs for public transit) for students to and from employer sites.

c. Hiring staff that meet state certification requirements or who may be certified under new compentency based state regulations, where such certification is allowed.

d. Meeting state curriculum requirements to insure appropriate crediting for students.

e. Utilizing existing regulations or seeking new regulations which allow for the option of awarding school credit for community and work experiences.

f. Organizing career education instructional programs on a non-graded basis.

6. Policies that disallow remuneration for employer site experiences should be developed. We concur with the statements expressed by current developers that payment of students creates a different kind of learning experience and learner-employer relationship. Our review suggests that the most common test of whether a student is classified as learner or employee is whether he receives a wage. It is not suggested that students be classified as learners so as to subvert the provisions of the Fair Labor Standards Act. (The Act provides appropriate restrictions on hazardous and exploitive occupations for minors which should be understood and followed by EBCE developers.) Rather, students should probably be regarded as learners because they would meet the most common test of a

"learner" as one who receives no remuneration for his efforts.

As a final caveat, not a conclusion, we remind the reader once again that while the conclusions and the research discussed herein have certain legal precedence, the conclusions of this study are not offered as legal advice to CEP.

APPENDIX A

Summary of

Compulsory School

Attendance Regulations[1]

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[1] From Umbeck, Nelda. State legislation on school attendance and related matters -- school census and child labor. U.S. Office of Education, Legislative Services Branch, 1960.

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TABLE V---SUMMARY BY STATES OF SCHOOL ATTENDANCE

State	Compulsory School Attendance Age	Permissive School Attendance Age	Minimum School Term Required	Minimum Attendance Required	*Exemptions From School Attendance Other Than Those Listed As Common To All States
1	2	3	4	5	6
Ala.	7-16[1]	6	175 days	Full term	Children who have completed high school; have reached the age of 16 and are legally and regularly employed; live more than 2½ miles from school in an area where there is no public transportation.
Alaska	7-16	6	Fixed by school board of school district	Full term[3]	Children who have completed the 8th grade or the highest grade maintained in the district; reside more than 1½ miles from school unless transportation is furnished. (In the case of native children, residence is interpreted to include any dwelling in which the child has resided for 30 days or more.)
Ariz.	8-16	6-21	8 months	Full term	Children who have completed prescribed grammar course; are 14, lawfully employed and attending continuation school, if such school is provided in the district; have presented reasons for nonattendance deemed satisfactory to board made up of president of local board of trustees, child's teacher, and probation officer of the county superior court.
Ark.	7-16[4]	6-21	9 months	150 days[5]	Children who have completed 8th grade; are exempt because their services are needed to support a widowed mother.
Calif.	8-16	5 ¾[6]	175 days	Full term[7]	Children who are employed and holding a work permit; reside more than 2 miles from school by the nearest traveled road.
Colo.	8-16[8]	6-21	3 months[9]	Full term	Children who are 14 and have completed the 8th grade, or are eligible to enter high school in the district; are 14 and their services are necessary for own or parent's support; are 14 and it can be shown that exemption is in the best interest of the child.
Conn.	7-16	6 but local board may admit at an earlier age	180 days	Full term	Children who are 14 and lawfully employed; are destitute of clothing suitable for attending school because parent or guardian is unable to provide these necessities.
Del.	7-16	6-21	180 days	Full term	Children who are legally employed or otherwise legally excused.
D. C.	7-16	6 if children have successfully completed kindergarten	186 days	Full term	Children who are 14, have completed 8th grade, and are legally and lawfully employed; are excused for reasons considered valid by the board of education.
Fla.	7-16	5¾-21	180 days for pupils plus periods of preschool and post school conferences	Full term	Children who are 14, hold employment certificates, and are employed under the provisions of the child-labor law; are compelled, because of lack of public transportation, to walk more than 3 miles, if between 6 and 10 years of age, or 4 miles if between 11 and 16, by the nearest traveled route to school or to a publicly maintained school bus route; are exempted upon recommendation of the juvenile court and the county superintendent; are exempted because parent claims he is financially unable to provide necessary clothing and such claims is determined by the county superintendent to be valid; are excused for reasons defined as valid by the board of education.

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* See note at end of table.

[1] Act No. 201, H. 296, Sec. 8, Aug. 3, 1955--"Any other provisions of law notwithstanding, no child shall be compelled to attend any ool in which the races are commingled when a written objection of the parent or guardian has been filed with the board of education."

[2] However, permits must show "satisfactory school work."

[3] But, absence up to 5 days is not penalized.

[4] Act No. 54, Sec. 1, Feb. 26, 1957--"Notwithstanding any other provision of law no child in the State of Arkansas shall be ired to enroll in or attend any school wherein both white and Negro children are enrolled."

[5] One hundred and fifty days as nearly consecutive as possible for a full 9 months term. In case school is in session for less n 9 months a "corresponding number of school days in the full session thereof" is required.

[6] If a child has completed 1 year of kindergarten in California and was of proper age at time of enrollment in kindergarten, he

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e For oyment rmits	Minimum Education For Employment Permits	Physician's Certificate For Employment	Continuation Or Part-time School Attendance	School Census---Authorization Frequency Age Span	Special Census For Handicapped Or Special Handling within Regular Census
7	8	9	10	11	12
16	Not specified[2]	Required	Attendance not required. Part-time continuation classes may be established under authority of the city board of education	Mandatory, biennially, ages 7-20	Not required
No provision	Not specified	Not required	No provision.	Required by law, annually, ages 5-21 until repealed in July, 1953	Not required
Under 16	5th grade	Required	150 hours per year; not less than 5 hours per week between 8 a.m. and 6 p.m. for children under 16 regularly employed. Hours of attendance at part-time schools are counted as hours of employment.	Not required	Not required
Under 16	4th grade	Not required	No provision.	Mandatory, biennially, ages 6-18	Not required
-18	8th grade for child 14; 7th grade for child 15	Required if 14 or 15 years old	Required for children under 18 unless they are physically or mentally incapacitated; have graduated from a 4-year high school; are required to render personal service to dependents; or unless their interests would suffer if compelled to attend. Exemptions on the basis of the last mentioned factor are limited to 5 percent of the pupils eligiblefor continuation education.	No provision	Not required
-16	([10])	Not required	No provision.	Mandatory, annually, ages 6-21	Required
-16	8th grade; waived in case of an educationally retarded child	Required	Establishment of continuation schools is not compulsory but in areas in which they are established children who are regularly employed 4 hours weekly during school year between 8 a.m. and 5 p.m. are required to attend unless they have completed the 8th grade or have been excused by secretary or agent of the State board of education.	Mandatory, annually, ages 0-18	Not required
Under 16	Not specified	Not required	No provision.	Mandatory, biennially, ages 5-18	Not required
14-18	8th grade for persons 14-16	Required if child is under 16	No provision.	Mandatory, annually, (or as frequently as it may seem necessary to the superintendent and board of education), ages 3-18	Not required
Under 16	8th grade	Required	Required during regular employment hours for 144 hours per school year of children under 16 exempted from regular school attendance for any cause except physical or mental disability or completion of 8th grade. Continuation schools must be established wherever as many as 15 children thus exempted from regular school attendance reside, or are employed, within the attendance area of any one school or schools 3 miles or less apart.	Mandatory, continuously or periodically as determined by State board of education, provided that the school census be brought up to date at least twice in each decade, ages 6-18	Required

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may enter 1st grade regardless of age.

[7] During the continuance of a state of war, the State superintendent of public instruction, with the approval of the Governor, is empowered to close schools or postpone their opening, whenever in his opinion such action is necessary for the planting or harvesting of crops or for other agricultural or horticultural purposes. However, the annual school term shall not be reduced to less than 6 months. In order to prevent undue reduction in the number of days of school attended, authority is also granted to maintain school on Saturdays and certain holidays during a national emergency when pupils are excused from regular attendance inorder to harvest crops.

[8] Compulsory attendance requirements do not apply in districts where there are not sufficient accomodations in public schools to children.

School board determines the length of the school term over and beyond 3 months.

[10] Able to read at sight and write legibly simple sentences; or certification of regular attendance at an evening school.

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TABLE V---SUMMARY BY STATES OF SCHOOL ATTENDANCE

State	Compulsory School Attendance Age	Permissive School Attendance Age	Minimum School Term Required	Minimum Attendance Required	*Exemptions From School Attendance Other Than Those Listed As Common To All States
1	2	3	4	5	6
Ga.	7-16[11]	6-18	9 months	175 days	Children who have completed all high school grades; are excused from attendance by county or independent school system boards of education in accordance with general policies and regulations established by the State board of education, and applying to such things as "seasonal labor", emergencies, sickness, etc.
awaii	6-16	6	180 days	Full term	Children who live more than 4 miles from the nearest school, if no free or commercial transportation is available; have completed the 8th grade and live more than 4 miles from any public school which teaches classes above the 8th grade; are 15, suitable employed and excused from school attendance by the appropriate authority; are 14, and have not completed the 5th grade. However, such children shall attend vocational or special opportunity classes if such opportunities are provided by the department of public instruction, and they may be reinstated to their regular grades by the superintendent of public instruction if, in his opinion, the facts warrant such reinstatement.
Idaho	7-16	6-21[13]	([14])	Full term [15]	Children who are habitual truants or are guilty of disruptive conduct; any child so exempted shall come under purview of the youth rehabilitation law and the board of trustees shall notify the probate court of the county in which the child resides.
Ill.	7-16	6-21	9 months	Full term	Children who are necessarily and lawfully employed according to the provision of the law regulating child labor and excused by the superintendent of schools and the district school board; are 12 or 14, and excused to attend confirmation classes.
Ind.	7-16	6-21	8 months	Full term [18]	Children who are 14, have completed the 8th grade, and are lawfully employed in accordance with the employment certificate system; are temporarily exempt upon the request of parents for causes other than employment; are excused for a minimum of 2 hours a week for religious instruction.
Iowa	7-16	6	180 days	24 consecutive weeks of 5 days each [19]	Children who have completed the 8th grade or the equivalent of the 8th grade; are 14, and regularly employed; are excused for sufficient reason by any court of record or judge; are excused while attending religious services or receiving religious instruction.
Kans.	7-16	6-21[20]	8 months	Full term	Children who have completed the 8th grade.
Ky.	7-16	6	9 months[21]	Full term	Children who have completed an accredited or approved 4-year high school.
La.	7-16[23]	5¾ -18	9 months	180 days; full session if term is less than 180 days	Children who live more than 2½ miles from a school of suitable grade in an area where adequate free transportation is not furnished by school board, or more than 1½ miles from a transfer route providing free transportation to a school of suitable grade; are temporarily excused under rules and regulations promulgated by the State Board of Education.

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*See note at end of table.

[11] H.B. No. 3, Feb. 26, 1957. The Governor may suspend the operation of the compulsory attendance law when necessary because of riot, disturbance of the peace, or disaster.

[12] Exempted from all provisions of the child-labor law: Work of a minor in agriculture or in domestic service in private homes, or in peach packing establishments during the peach season, and employment of a minor by his parents or by a person standing in place of his parents.

[13] State board ruling requires that a child in order to enter school must have reached his 6th birthday by October 15.

[14] The actual length of the school term is determined at the annual school meeting by the vote of the inhabitants of the district or districts affected.

[15] However, children in the 6th, 7th, and 8th grades may, in the discretion of the school trustees, attend 8 instead of 9 months on request of parents.

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Age For Employment Permits	Minimum Education For Employment Permits	Physician's Certificate For Employment	Continuation Or Part-time School Attendance	School Census---Authorization Frequency Age Span	Special Census For Handicapped Or Special Handling Within Regular Census
7	8	9	10	11	12
Under 18[15]	Not specified	Required	No provision.	It is the duty of the State board of education to adopt such rules and regulations as may be necessary for taking a school census and keeping it current.	Not required
Under 18	Not specified	Not required	No provision.	No provision	Not required
No provision	([16])	Not required	No provision.	Mandatory, annually, ages 6-21	Required
16	Not specified[17]	Required	Establishment of continuation schools is optional, not compulsory. Where such schools are established, children above 16 and below 18 who are necessarily and lawfully employed, are required to attend at least 8 hours each week.	Mandatory, annually, ages 6-21	Permissive, not mandatory
14-18	Completion of 8th grade for child under 16	Required	Local boards of education or township trustees may require attendance of any child between 14 and 17, or any employed child between 14 and 18, for not less than 4 nor more than 8 hours a week between 8 a.m. and 5 p.m. during the school term. There is no provision requiring the establishment of continuation schools.		Not required
Under 16	Completion of 6th grade	Required	Attendance required, where such schools are established, of minors between 14 and 16 not regularly attending full-time day school or not graduated from an approved 4-year high school, for 8 hours weekly between 8 a.m. and 6 p.m. Establishment of such schools is mandatory in cities having a population of 12,000 or more if as many as 15 children are affected thereby; establishment in cities less than 12,000 population is optional and determination is made by the board of directors of the school district.	Mandatory, biennially, ages 5-21	Required
Under 16	8th grade	Not required	No provision.	Mandatory, annually, ages 0-21	Required
Under 18	([22])	Required	Minors holding employment certificates may be required to attend. Establishment of part-time schools not compulsory.	Mandatory, continuously, ages 6-18	
Under 18	Not specified	Required	Attendance of 144 hours per year may be required of boys between 14 and 15 and girls between 14 and 18, unless they have completed high school. Establishment of such schools is not compulsory.	Mandatory, continuously, ages 0-18	Required

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[16] Literacy and proficiency in basic subjects is required for employment of children under 16 in any gainful occupation during school hours. Youth Rehabilitation Act probably takes precedence here.
[17] However, the work permit must show last grade attended.
[18] Full term except when employed under a school directed vocational educational program.
[19] However, attendance for the entire session may be required by the board of school directors.
[20] Sec. 131, Kansas School Laws, 1957. Common school districts may exclude at age 18.
[21] Term may be extended to 10 months by the superintendent of public instruction upon the approval of the State board of education.
[22] No educational requirements, but school record indicating grade last completed and scholastic standing must be shown.
[23] Act No. 28, June 21, 1956--Compulsory school attendance "shall be suspended and inoperative within any public school system and/or private day school wherein the integration of the races has been ordered by any judicial decree or authority."

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TABLE V---SUMMARY BY STATES OF SCHOOL ATTENDANCE

[illegible]ate	Compulsory School Attendance Age	Permissive School Attendance Age	Minimum School Term Required	Minimum Attendance Required	*Exemptions From School Attendance Other Than Those Listed As Common To All States
1	2	3	4	5	6
[illegible]	7-15 /24	5-21	180 days	Full term; absence of days constitutes truancy	Children who are excused for necessary absence by the superintending school committee because the children's physical or mental condition makes it inexpedient for them to attend.
[illegible]	7-16	6-21	180 actual days; if possible, for as long as 10 mo. in elementary school	Full term	Children who, in the judgment of the superintendent of schools, acting with the advice of the school principal, supervisor, and pupil personnel supervisor or visiting teacher, can no longer profit from regular school attendance; are excused for necessary absence by the superintendent or principal of the school they attend.
[illegible]	7-16	Not specified	160 days elementary; 180 days high school	Full term	Children who are 14 or 15, have completed 6th grade, and are lawfully and regularly employed for at least 6 hours a day; are 14 or 15, have completed 6th grade and have written permission of the town superintendent of schools to engage in nonwage-earning employment at home; are excused for religious education for not more than 1 hour each week at such times as the school committee may determine; are granted a permit of exemption by the superintendent of schools if in his discretion the child will be better served by granting such permit. (Not issued for any child under 14, nor for the employment of children 14 and 15 in factory, workshop, manufacturing, or mechanical establishment)
M[illegible]	6-16	5-21	9 months	Full term	Children who are regularly employed as pages or messengers in the legislature; are under 9 and live more than 2½ miles from school by nearest traveled road in an area where transportation is not furnished; are between 12 and 14 and are attending confirmation classes.
M[illegible]	7-16	5-21	9 months; a maximum of 10 mo. is specified	Full term	Children who have completed studies ordinarily required in the 9th grade; are excused for not more than 3 hours per week to attend religious instruction conducted by some church in a place other than a public school building and not at public expense; are excused to attend instruction on special days set apart according to the ordinances of their church; live in an area where there is no school within reasonable distance of their residences; are excused because the conditions of weather and travel make it impossible to attend; are 14, live in localities outside cities of the first and second class and whose help is required at home between April 1 and November 1.
M[illegible]	No provision at present /28	6-21	Not applicable at this time	Not applicable at this time	No exemptions required inasmuch as compulsory education legislation has been repealed.
M[illegible]	7-16	6-20	8 months	Full term	Children who are 14, regularly and lawfully engaged in some desirable employment and excused by the superintendent or by a court of competent jurisdiction. /30
Mont.	7-16	6-21	6 months	Full term	Children who live at such distance from any school that, in the judgment of the county superintendent, attendance would constitute undue hardship.

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*See note at end of table.

/24 Any child who cannot read and write legibly simple sentences in the English language must attend until he is 17. Any child between 15 and 16 who has not completed the grades of the elementary school shall attend some public day school during the time such school is in session. However, attendance at public schools shall not be required if the child obtains equivalent instruction, for a like period of time, in a private school in which the course of study and the methods of instruction have been approved by the Commissioner, or in any other manner arranged for by the superintending school committee with the approval of the Commissioner.

[illegible] However, the Commissioner of education and the Commissioner of Labor and Industry acting jointly may make exception in case of a child between 15 and 16 of subnormal mental capacity.

[illegible] However, educational requirements may be waived, if in the discretion of the superintendent of schools, the child's best interest would be served thereby.

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Age npl Fe	For tent its	Minimum Education For Employment Permits	Physician's Certificate For Employment	Continuation Or Part-time School Attendance	School Census--- Authorization Frequency Age Span	Special Census For Handicapped Or Special Handling Within Regular Census
7		8	9	10	11	12
de:	6	8th grade/25	May be required	Attendance not compulsory. Schools may be established for employed minors between 14 and 18 who have not completed the elementary school course.	Mandatory, annually, ages 5-21	Required
de:	8	No grade requirement but school record may be required	Required	No provision.	Permissive, biennially, ages 0-18	Permissive
14-16		6th grade /26	Required	Mandatory for children between 14 and 16 regularly employed, temporarily employed, or excused for employment at home.	Mandatory, annually, ages 5-16	Required
4-		Not specified	Not required/27	Required for 8 hours a week of unmarried minors under 17 not attending full-time school, except those who have completed 2 years of a 4-year high school course, or who would thereby be deprived of wages essential for own or family support. Establishment of such schools is mandatory in districts with a population of 5,000 or more in an area having 50 or more children eligible for attendance. Schools may be established in other districts.	Mandatory, annually, ages 0-20	Required
4-1		Completion of 8th grade required	Required	No provision.	Mandatory, annually, ages 0-21	Required
vision		Not specified/29	Not required	No provision.	Mandatory, biennially, ages 6-21	Not required
r.		Not specified; however school record is required	Required	Required of children under 16 lawfully engaged in regular employment, and of all minors under 18 who have not completed the elementary school course and who are not attending regular day school. Attendance is required for 4 hours per week between 8 a.m. and 5 p.m. for a period not less than the regular school term. Unless waived by the State board of vocational education, the establishment of such schools is mandatory in districts where as many as 25 employment certificates for children under 16 are in force.	Mandatory, biennially, ages 6-21	Required
-21		Completion of 6th grade required except when wages are necessary for family support	Not required	Attendance not compulsory, and the establishment of such schools is not compulsory. However, they may be established in any high school district for pupils between 14 and 21 years who have left regular full-time day school in order to work.	Mandatory, annually, ages 6-21 /31	Required.

But, the physical condition of the child is an item of consideration in the issuance of a work permit.

on. Res. No. 8-XX, adopted Feb. 1, 1955, in the second special session, authorized the legislature by a two-thirds vote of es to abolish public schools in the State; it also authorizes counties and school districts to abolish their public ols upon a majority vote of those members of the legislature present and voting in each house.

however, for children under 16, employer must secure affidavit from parent and certificate from school principal stating age of , grade attained, and name of school last attended, together with the name of the teacher in charge.

Attendance officers may investigate claims for exemption from school and issue certificates of exemption when such claims are tli ed to their satisfaction.

A separate census is taken of children under the age of 6 years.

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TABLE V---SUMMARY BY STATES OF SCHOOL ATTENDANCE

State	Compulsory School Attendance Age	Permissive School Attendance Age	Minimum School Term Required	Minimum Attendance Required	*Exemptions From School Attendance Other Than Those Listed As Common To All States
1	2	3	4	5	6
Nebr.	7-16	5-21[32]	8 months in some districts; 9 in others [33]	Full term	Children who have graduated from high school; are 14, have completed the 8th grade, and whose earnings are necessary for their own or their family's support.
Nev.	7-17	5	6 months[34]	Full term	Children who have completed 12 grades of the elementary and high school courses; are 14 or over and whose work is necessary for own or parent's support; are 14 or over, have completed the 8 grades and are excused, by written authority of board of trustees, to enter employment or apprenticeship; have completed 8th grade and are excused on permit from the juvenile court; reside at such distance from school that attendance is impracticable or unsafe as determined by the deputy superintendent.
N. H.	6-16	Not specified	180 days[35]	Full term	Children who are 14, have completed the elementary school course and live in a district which does not maintain a high school; are excused to receive private instruction in music; are 14 and excused for such period as seems best for their interests on the ground that their welfare will be best served by withdrawal from school. The Commissioner of education, upon examining the facts and the recommendations of the local superintendent of schools or of a majority of the school board, makes the decision.
N. J.	7-16	5-20	9 months	Full term	Children who are 14 and have completed the 8th grade; are 15, have completed 6th grade, and are regularly and lawfully employed in some useful occupation or service; are 14 or over, engaged in work which is a part of their schooling. A joint certificate from the Commissioners of labor and education is required.
N. Mex.	6-17	5 years & 8 months [36]	172 teaching days	Full term	Children who have graduated from high school; reside more than 3 miles from public school unless free transportation is furnished; are 14 and hold employment certificates.
N. Y.	7-16[38]	5-20[39]	190 days, including legal holidays	Full term	Children who have completed high school; are excused for religious observance and education under rules established by the Commissioner of education; are 15 and are found incapable of profiting by further available instruction under regulations issued jointly by the industrial Commissioner and the Commissioner of education, and are employed on a special employment certificate; though unemployed, are eligible and have applied for employment certificates for full-time work while school is in session. These minors may be permitted to attend part-time school for not less than 20 hours a week.

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*See note at end of table.

[32] If a child has completed 1 year of kindergarten, he may enter the 1st grade regardless of age.

[33] Nine months is required when this length of term can be supported by a levy of 12 mills on the dollar actual valuation, plus income from State apportionment.

[34] However, a minimum of 9 months is required if funds are available for such purpose in the district.

[35] If the school board of any district shall decide that, by reason of special conditions or circumstances, the maintenance of standard schools for 180 days in said district is undesirable, said school board may so represent in writing to the State board, provided, however, the State shall not reduce the days on account of workshops, conventions, or teachers' institutes.

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R ULATIONS AND RELATED MATTERS (contd)

I ge For loyment permits	Minimum Education For Employment Permits	Physician's Certificate For Employment	Continuation Or Part-time School Attendance	School Census---Authorization Frequency Age Span	Special Census For Handicapped Or Special Handling Within Regular Census
7	8	9	10	11	12
14-16	Completion of 8th grade, or literacy test in English	Required in doubtful cases	In districts where continuation schools are maintained, attendance is required of children between the ages of 14 and 16 who are regularly and legally employed and who have not graduated from high school.	Mandatory, annually, ages 0-21	Required
-17	Completion of 8th grade unless child's work is necessary to support himself or his parents	Not required	Required of employed children between 14 and 17 for 4 hours a week between 8 a.m. and 6 p.m. during the public school term unless they have completed the 8th grade and are bound to apprenticeship under a satisfactory contract, or work at such distance from school that attendance is impossible or impracticable, or are excused for reasons listed as exemptions from regular school attendance. Establishment of continuation schools is required in districts in which 15 or more children between 14 and 17 are employed or reside unless district is released by State board of education.	Not mandatory	Not required
Under 16	No grade requirement	Required	No provision	Mandatory, annually, ages 0-18	Required
Under 18	No school grade requirement	Required	Attendance required for at least 6 hours each week for a minimum of 36 weeks of a child between 14 and 16, who is regularly and lawfully employed; at least 20 hours each week if temporarily unemployed but holding an age and schooling certificate.	Permissive, once every 5 years, ages 5-18	Not required
4-16	No grade or educational requirement /37	Optional with the officer who issues the employment certificate	Required for 5 hours a week and not less than 150 hours per year, between 8 a.m. and 6 p.m., of children between 14 and 16 when employment certificates have been issued.	Mandatory, annually, all unmarried persons 6-18	Required
Under 18	No grade requirement	Required	Required for not less than 4 and not more than 8 hours (20 if temporarily unemployed) per week between 8 a.m. and 5 p.m. (on Saturdays between 8 a.m. and 12 noon) of minors between 16 and 17 years of age, employed or not attending full-time school, in cities 400,000 or more and in school districts having 1,000 or more employed minors under 17, except those who are high school graduates, physically or mentally incapacitated or excused during rush season by school board authorities on condition that employers shall permit minors to make up the time at a later and less rushed season. The board of education of a city or district having a smaller population shall have the power to require the attendance of minors at continuation schools in accordance with these same regulations.	Mandatory, continuously, in all cities, annually, in other school districts, ages 0-18	Required

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/36 Pupils who will be 6 years of age on or before January 1, after the beginning of the year.

/ However, evidence of economic necessity is required in order to obtain an employment certificate for work during school hours.

/ Compulsory school attendance may be extended to 17 by local board of education in any city or in any union free-school having more than 4,500 inhabitants and employing a superintendent of schools. Compulsory attendance for part-time day instruction is required of employed minors who are from 16 to 17 years of age and are employed in cities or school districts having a continuation school.

/ However, if child has completed 1 year of kindergarten, he may enter the 1st grade regardless of his age. "A veteran of any age w shall have served as a member of the armed forces of the United States and who shall have been discharged therefrom under c itions other than dishonorable, may attend any of the public schools of the State upon conditions prescribed by the board of education, and the attendance of such veterans shall be counted for State aid purposes."

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State	Compulsory School Attendance Age	Permissive School Attendance Age	Minimum School Term Required	Minimum Attendance Required	* Exemptions From School Attendance Other Than Those Listed As Common To All States
1	2	3	4	5	6
. C.	7-16[40]	6-21[41]	120 days as stated in the constitution	Full term operated	Children who are excused by the principal, superintendent, or teacher because of distance of residence from school, or sickness, or other unavoidable cause which does not constitute truancy as defined by the State board of education; are excused by the State board of education during any period of emergency as might exist in any section of the State where the planting or harvesting of crops or any other condition makes such action necessary.
N. Dak.	7-16	6-21	32 weeks in every school year	Full term	Children who have completed high school; live more than 2 miles from school by the nearest route if school district does not pay transportation according to a mileage schedule set in the law or the equivalent thereof in lodging or in tuition at some other school or does not furnish transportation by public conveyance; live 6 miles or more from school by the nearest route if the school district does not furnish transportation by public conveyance; attend, for a period not exceeding 6 months (in one or more years), any parochial school to prepare for religious duties; are excused, if it is determined by the school board, acting with the approval of the county superintendent, that it is necessary for them to work in order to support their family.
hio	6-18	6-21	32 weeks per school year	Full term	Children who have completed high school; are employed on certificate; are determined incapable of profiting substantially by further instruction; are 14 and excused in writing by the superintendent of schools under rules and regulations of the department of education for a limited period to perform necessary work for parents; are excused for good and sufficient reasons by the board of education of the city, village, or county school district, or by the authorities of private or parochial schools.
kla.	7-18	6-21	180 days, 5 of which may be used by the teachers to attend professional meetings	Full term [42]	Children who have completed high school.
Oreg.	7-18	6-21	170 days[45]	Full term	Children who live at the following distances by the nearest traveled road from a public school in an area where transportation is not furnished: 1½ miles if between 7 and 10 years of age; more than 3 miles if over 10 years of age; are excused for religious instruction for period not to exceed 2 hours a week; are excused from attendance by a written statement from the county superintendent who may grant such excuse for a period not to exceed a total of 5 days in a term of 3 months, or 10 days in any one term of 6 months or longer; are 16 and legally employed; have completed the 12 grade; have completed the 8th grade and are excused by the school board of the district, if in the board's judgment further attendance in school would either cause a hardship in the child's family or be educationally unprofitable to the child.
Pa.	8-17[47]	6-21[47]	180 days	Full term	Children who have completed high school; are 16 and regularly engaged in useful and lawful employment or service and hold employment certificates; are 15 and engaged in farm work or domestic service in private homes on special permits issued by the school board or the designated school official of the school district of the child's residence in accordance with regulations of the superintendent of public instruction --children 14 years of age may be excused under these conditions if they have satisfactorily completed the equivalent of the highest grade of the elementary school organization prevailing in the public schools of the district in which they reside; are unable to profit from further school attendance upon the advice of an approved mental clinic or public school psychologist or phychological examiner (the State council of education prescribes the regulations that must be followed); live more than 2 miles by the nearest public highway from a public school in an area where free transportation is not furnished (this exemption does not apply in fourth-class and certain third-class districts).

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* See note at end of table.

[40] H. B. 5, Extra Session 1956, July 27, states that compulsory attendance requirement shall not apply with respect to any child assigned against the wishes of the parent or guardian to a public school attended by a child of another race.

[41] If a child has already been attending school in another State in accordance with laws and regulations thereof before becoming a resident of North Carolina, such a child will be eligible for enrollment in the schools of North Carolina regardless whether such ild has passed his 6th birthday.

[42] Full term except when conditions beyond the control of school authorities make impossible the maintenance of said term.

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A Emp P	For ment its	Minimum Education For Employment Permits 8	Physician's Certificate For Employment 9	Continuation Or Part-time School Attendance 10	School Census--- Authorization Frequency Age Span 11	Special Census For Handicapped Or Special Handling Within Regular Census 12
Und	18	No educational requirement, but school record is required	Required	No provision.	Mandatory, continuously, ages 6-21, unless graduated from high school	Not required
	14-16	Completion of 8th grade or school attendance for at least 9 years	Not required	No provision.	Mandatory, biennially, ages 0-21	Required
Unc	18	Completion of 7th grade	Required	Required, where continuation schools are established, of employed minors between 16 and 18 for not less than 4 hours per week while school is in session and not less than 144 hours per year between 7 a.m. and 6 p.m. on school days, except children exempt from full-time school attendance for causes other than employment. Establishment of continuation schools is not mandatory.	Mandatory, annually, ages 5-18	Required
Un	16[43]	No grade requirement [44]	May be required by officer issuing certificate	No provision.	Mandatory, annually, ages 0-18	Required
	14-18	No educational requirement[46]	May be required	Required of employed children between 16 and 18 for not less than 5 hours a week or 180 hours a year between 8 a.m. and 6 p.m., except of those who have completed the 12th grade; have completed the 8th grade and are excused by the school board of the district if in the board's judgment further attendance in school would either cause hardship in the child's family or be educationally unprofitable to the child; or are attending an evening school for an equivalent time.	Mandatory, annually, ages 4-20	Required
	14-18	Children 14 years of age are required to have completed the highest elementary grade in the district; children 15 are required to have completed the 6th grade and establish urgent need to work	Required	No provision.	Mandatory, annually, ages 0-18[48]	Not required

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Under 18 where continuation schools are established.

However, ability to read and write simple sentences in English, or attendance at school during previous year required.

Unless specific permission is given for a less number of days by the county district boundary board. A "standard school" must have a minimum of 170 days of actual classroom instruction in order to be eligible for the basic school fund apportionment.

[46] Children between 16 and 18 may be legally excused to enter employment if they attend evening school or have completed high school.

[47] School attendance is permissive between the ages of 5 years and 7 months to age 8, but if admitted, then compulsory school attendance applies. School boards may admit children at the age of 5 if such children have a mental age of 7.

If adequate continuing census is maintained, the house-to-house canvass is mandatory once in 3 years; otherwise, annually.

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State	Compulsory School Attendance Age	Permissive School Attendance Age	Minimum School Term Required	Minimum Attendance Required	*Exemptions From School Attendance Other Than Those Listed As Common To All States
1	2	3	4	5	6
P. R.	8-14 [49]	8	8 months and in no case shall it exceed 10 months	Full term	Children whose parents or guardians show good and sufficient cause for withdrawal in the judgment of the supervising principal of the schools of the municipality.
R. I.	7-16	([51])	180 actual days	Full term	Children who are excluded by some general law or regulation.
S. C.	No provision at present [53]	6-21	No provision at present	No provision at present	No provision at present.
S. Dak.	7-16	6-21	9 months, provided no legal discontinuance is ordered	Full term	Children who have completed the 8th grade; attend religious instruction (limited to 1 hour a week); are excused when serious illness in their immediate families makes their presence at home necessary or their presence at school a menace to the health of other pupils.
Tenn.	7-17 (7-16 inclusive)	6	180 days	Full term	Children who have completed high school; live more than 3 miles from school of suitable grade by the nearest traveled road in an area where free transportation is not provided; may be excused at age 15 if their continued attendance, in the opinior of the board of education, is not of substantial benefit to them and results in detriment to good order.
Texas	7-16 [56]	6-21	120 days	Full term [57]	Children who live more than 2½ miles by direct and traveled road from the nearest public school for children of the same race and color, in an area where free transportation is not furnished; attain the age of 16 after the opening of the public schools in the district in which they reside, have satisfactorily completed the 9th grade, and present proper evidence indicating that their services are needed in support of parent or guardian.
Utah	6-18	Not specified	30 weeks	Full term	Children who have completed high school; are 16 and have completed the 8th grade and are legally excused to enter employment; are 16, or over, whose services are required for support of mother or invalid father, if legally excused to enter employment; are 16 and over, unable to profit from further attendance because of inability or negative attitude; have proper influences and adequate opportunities for education provided in connection with employment.
Vt.	7-16	6-18	175 days	Full term	Children who have completed 2 years of junior or senior high school in addition to the elementary course or the rural school course; are 15 or over, have completed the 6th grade and are excused, in writing, by the superintendent of the school, with the consent of a majority of the school board, because services are needed for support of dependents, or for any other sufficient reason; are excused, in writing by the superintendent of the school, for a definite time not to exceed 10 consecutive days in case of emergency or because of absence from town. Children who attend an elementary school which is in session more than 175 days are not required to attend more than 175 days.

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*See note at end of table.

[49] Children between 8 and 14 years of age shall be enrolled in any public school that may be located within reasonable distance of their homes, and their attendance at that school shall be enforced as herein provided in the case of any pupil enrolled in the public schools; PROVIDED, there be a school within reasonable distance as hereinbefore mentioned where accommodations can be furnished; AND PROVIDED, such children may not already have completed each grade of the course of study prescribed for the particular school which meets the conditions outlined.

[50] Act No. 39, approved June 15, 1959, authorizes the Secretary of Labor to grant permits for the employment of minors between 14 and 16 years in any gainful occupation, even during the period of time during which public schools are in session, when, the Secretary of Education determines that it is not possible to achieve the attendance of the minor to public schools, and when the Secretary of Labor determines that his employment will not result deleterious to his life, health, or welfare. The employment of minors in such cases shall be subject to the conditions and restrictions imposed in the permits by the Secretary of Labor.

[51] Not set by law. It is left to the discretion of the local school committee.

[52] However, children of compulsory school age are not granted permits to work while schools are in session.

[53] Act No. 90, March 9, 1955, repealed the compulsory school attendance law.

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Ag mpl Permits For ment	Minimum Education For Employment Permits	Physician's Certificate For Employment	Continuation Or Part-time School Attendance	School Census---Authorization Frequency Age Span	Special Census For Handicapped Or Special Handling Within Regular Census
	8	9	10	11	12
14-16[50]	No grade requirement	Required	No provision.	Administrative authorization; frequency is determined by the Secretary; all minors of school age	Not required
14-16 wh school is t in ses on	There is no education requirement for obtaining employment permits[52]	Not required	No provision.	Mandatory, annually, ages 4 21	Not required
No o- vision at present	No provision at present	No provision at present	No provision at present.	Mandatory, annually, of all unenrolled children 7-16 years of age[54]	Not required
Un 16	No grade requirement [55]	Not required	No provision.	Mandatory, annually, ages 0-21	Required
Ur r 16	No educational requirement, but school record is required	Required	Where such schools are maintained, attendance is required for 15 hours a week between 8 a.m. and 6 p.m., during the weeks in which other public schools are in session, of children between 14 and 16 years of age to whom employment certificates have been issued. Establishment of continuation schools is not compulsory.	Mandatory, biennially, ages 6-18	Required
N mploy- m cer- t cate system for children a e the m mum of 15	([58])	Required for special permits	No provision.	Mandatory, annually, ages 6-18	Required
Under 18	No educational requirement [59]	May be required in doubtful cases	Required of children under 18, legally employed, for 4 hours a week between 8 a.m. and 6 p.m., totaling at least 144 hours a year except of children who are exempt from regular attendance for reasons other than employment.	Mandatory, annually, ages 0-18	Not required
er 16	Completion of 8th grade as a general rule[60]	Not required	No provision.	Mandatory, annually, ages 6-18	Not required

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[54] Census is taken within 30 days after the opening date of each school.

[55] But child must be able to read at sight and write simple sentences in English, or must have attended school regularly during the preceding 12 months.

[56] A child who attains the age of 16 after the beginning of the public school in his district is subject to the provisions of the compulsory attendance law for that school period, unless exempted as indicated under item 2.

[57] Full term, provided no child shall be required to attend a longer period than the maximum term of the public school in the district in which he resides.

[58] Special permits may be issued by the county judge to child 12 or over, in case of economic need, who has completed the 5th grade.

[59] But children must be 16 in order to obtain certificates for work during school hours.

[60] But children 15 years of age who are excused from school attendance in order to support dependents may obtain a permit after completing the 6th grade.

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State	Compulsory School Attendance Age	Permissive School Attendance Age	Minimum School Term Required	Minimum Attendance Required	*Exemptions From School Attendance Other Than Those Listed As Common To All States
1	2	3	4	5	6
Va.[61]					Children who are 14 or over and are found to be incapable of profiting from further school attendance; live more than 2 miles from a public school if they are under 10 years of age unless public transportation is provided within 1 mile of home; or if between 10 and 16 years of age, live more than 2½ miles from a public school unless public transportation is provided within 1½ miles of home.[61]
Wash.	8-16	6-21	180 school days, as a general rule	Full term	Children who have completed high school; are 15 and find it necessary or advisable to leave school because of family needs or personal welfare and are able to obtain employment certificates; are 14, live in an area in which continuation schools are established, have completed the 8th grade, and are either regularly or lawfully employed or unable profitably to pursue further regular school work; are excused for other reasons deemed sufficient by the appropriate authorities.
W. Va.	7-16	6-21	180 days[62]	Full term	Children who have completed high school; have been granted work permits, subject to State and Federal Labor laws and regulations, provided that a work permit may not be granted on behalf of any youth of normal intelligence who has not completed the 8th grade; are excused, after careful investigation, because of extreme destitution (this exemption is not to be allowed when destitution is relieved by private or public means); live more than 2 miles from school or school-bus route by the shortest practical road or path; are excused for observance of regular church ordinances, subject to rules and regulations prescribed by the county superintendent and approved by the county board of education.
Wis.	7-16	6-20	9 months	Full term in cities of 1st class, 8 months in all other cities; 6 months in towns and villages	Children who have completed high school; have completed 8th grade and are attending a vocational or adult education school full-time in lieu of attendance at any other school.
Wyo.	7-17	6-21	6 months	Full term	Children who have completed the 8th grade; are excused by the district school board upon request of parent or guardian stating the reasons why attendance would work a hardship; are excluded for legal reasons from the regular school attendance in an area where there are no provisions for schooling these children.

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*See note at end of table.

[61] H.B. 5-X, approved January 31, 1959, repealed the compulsory school attendance law for Virginia. However, H.B. 68-X, approved April 28, 1959, "enables counties, cities, and certain towns in certain cases and under certain circumstances to provide for the compulsory attendance of children between the ages of seven and sixteen upon the public schools of this State and to provide penalties for violations". The exemptions appear to be the same as those listed above under item 6, with the following addition: ". . . the school board shall on recommendation of the principal, the superintendent of schools and the judge of the juvenile and domestic relations court of such county or city, or on recommendation of the Superintendent of Public Instruction, excuse from attendance at school any pupil who in their or his judgment cannot benefit from education at such school, provided no such child shall be so excused unless the written consent of his parents or guardian be given; and provided further that notwithstanding any other provisions of this act, the school board shall excuse from attendance at school any pupil whose parent, guardian or other person having custody of such pupil conscientiously objects to his attendance at such school as is available, when such fact is attested by the sworn statement of such parent, guardian or other person."

[62] This term may be extended for such time as necessary to make up any or all of the lost time which may have resulted from conditions of weather, contagious diseases, or other calamitous causes, or as a result of holidays.

[63] No grade requirement for children 15, or for children 14 who cannot profitably pursue further school work.

[64] The board of education regulation at present is from birth to age 21.

[65] Completion of most advanced course of study offered by the public schools of the district in which the children live or are employed, whichever offers the most advanced course. Employment of illiterate minors over 17 years of age is prohibited unless they are in regular attendance at a public evening school or a school of adult and vocational education.

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A For Emp yment Permits 7	Minimum Education For Employment Permits 8	Physician's Certificate For Employment 9	Continuation Or Part-time School Attendance 10	School Census--- Authorization Frequency Age Span 11	Special Census For Handicapped Or Special Handling Within Regular Census 12
Under 18	No educational requirement, but school record is required	Required	Establishment of part-time continuation or evening classes of less than college grade is authorized for persons over 14 years of age who are able to profit from such instruction. Attendance is not compulsory.	Mandatory, every 5 years ages 7-20	Required
Und-- 18	8th grade for children 14 /63	Not required	Where such schools are established, attendance is required of minors between 14 and 18 not attending full-time school, for 4 hours a week between 8 a.m. and 5 p.m. on school days and between 8 a.m. and 12:30 p.m. on Saturdays during the public school term, except for those for whom attendance would be injurious to health or who are excused from regular school attendance for reasons other than employment as described under item 6. Establishment of continuation schools is not mandatory. However, the board of directors in organized districts having 15 or more minors who would be required to attend may establish such schools on request of 25 adult residents.	Mandatory, annually, ages 5-21	Required
Und-- 16	8th grade for any youth of normal intelligence	Required	Continuation schools may be established under authority of county boards of education.	Mandatory, annually, ages 4-21 or of such ages as otherwise may be determined by regulation of the State board of education /64	Required
Un · 18	(/65)	Required	Required of unmarried minors under 16 as follows: At least 6½ hours each week if regularly and lawfully employed away from home; full-time if unemployed; half time if employed at home. Continuation schools must be established in places over 5,000 population wherever 25 persons qualified to attend request establishment.	Mandatory, annually, ages 4-20	Required
14-16	Completion of 8th grade and the school board record required	Not required	No provision.	Mandatory, annually, ages 6-21	Not required

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*Exemptions from compulsory public school attendance common to all States include the following:

1. Children whose physical or mental condition is such as to prevent or render inadvisable attendance at school. (In almost all States children who are able to profit by specialized instruction are required to attend some form of school. Also, some State laws require children handicapped solely because of deafness or blindness to attend private schools or State institutions established for children thus handicapped.)

2. Children who receive regular instruction by competent teachers (some States require certification of teachers) in a private, parochial or parish school or at home (Illinois, Nebraska, and Texas mention only private and parochial schools) during the minimum school year, in subjects prescribed for the public schools and in a manner suitable to children of the same age and stage of advancement. (Some of the State laws make specific requirements of nonpublic schools, such as a requirement to include in their curriculum a study of the Federal and State Constitutions, a study in good citizenship, and make the English language the basis of instruction in all subjects.)

3. Children who are excused for temporary absence because of personal sickness, sickness in the family, or because of some other insurmountable condition or circumstance, or cause acceptable to the teacher, principal, or superintendent. (The Virginia State law does not include a statement in regard to temporary absence.)

The appropriate procedure for making application for exemption from regular school attendance and for approving and recording such action has not been made a part of this compilation.

Appendix B

Far West Laboratory Agreement with Oakland Public Schools

COPY

OAKLAND UNIFIED SCHOOL DISTRICT
and
FAR WEST LABORATORY

THIS AGREEMENT is made and entered into this _____ day of ______, 1972, by and between the Oakland Unified School District, County of Alameda, State of California (hereinafter referred to as "District") and Far West Laboratory for Educational Research and Development, a non-profit organization created pursuant to a California Joint Powers Agreement (hereinafter referred to as "Laboratory").

WHEREAS, the United States Office of Education has contracted with the Far West Laboratory to develop a model of Employer-Based Career Education (EBCE) and to test its feasibility through pilot operation. (Employer-Based Career Education Model Feasibility Studies, Modification #14 to USOE Contract OEC-4-7-062931-3064, dated March 1, 1972), and

WHEREAS, the Laboratory as part of the contract with the U.S. Office of Education is to conduct a pilot Employer-Based Career Education Program which will be directed toward the secondary level of education, and

WHEREAS, the parties hereto have mutually agreed to the conditions contained herein which set forth the functions and responsibilities which the Laboratory and the District have agreed to assume in connection with the EBCE Program.

NOW THEREFORE BE IT RESOLVED, that the parties do covenent and agree to the following conditions:

A. Principal characteristics of the Employer-Based Career Education Program are the following:

   1. Each student's schedule of learning experiences will be tailored to his individual educational needs, and the student will assume progressively greater responsibility for planning and managing his own learning program.
   2. EBCE is designed to provide a complete educational experience for the student during his enrollment in the program. It assumes responsibility for providing each student with opportunities for acquiring knowledge and skills in the cognitive, social, and personal domains as well as vocational and avocational exploration and preparation.
   3. Heavy emphasis is placed on the student's active participation in real-life work settings and in other aspects of community life. The aim is to give the student opportunities to learn by doing and by associating directly and extensively with the adult community.
   4. Each student's educational progress will be evaluated in terms of acquired knowledge and skills rather than in terms of courses completed or time served. The student will be required to demonstrate his competencies in ways that are appropriate to his educational objectives and to his individual program of learning.

5. Heavy emphasis is placed on active community participation, especially to include the employing sector. Public and private employers will be encouraged to take an active part in arranging for learning locations and resources and to provide guidance and assistance in managing and facilitating the total program.

Operation of EBCE is to commence in September, 1972 with an initial enrollment of approximately 50 students. These students will be drawn initially from the final two years of high school. As the program evolves they may be drawn also from other grade levels. Prior to September, 1972, there will be a pre-pilot stage in which the need exists for utilizing the services of approximately ten students as development occurs in curriculum design, counseling and guidance procedures and training experiences in employer environments. The pre-pilot stage begins the Fall of 1972. At that time, the FWL will operate the program, with plans to turn its operation over to an organization of public and private employers during the calendar year 1973.

B. Far West Laboratory will be responsible for the following:

Contractual commitments to the USOE

1. Implementation of the EBCE concept as developed in earlier FWL feasibility studies and in operational plans approved by the USOE.
2. Fiscal accounting of all funds allocated to the FWL by the USOE for the EBCE program.

3. Periodic reporting to the USOE on progress achieved, expenditures, milestone items completed, evaluation findings, and other requirements for reporting that have been established contractually with the USOE.
4. Evaluation of the effectiveness of the EBCE program.

EBCE Program Administration

1. Establishment of an EBCE Board.
2. Establishment of the EBCE management and organizational structure.
3. Recruitment, hiring and administration of EBCE personnel.
4. Lease and operation of its own facilities and equipment.
5. Dissemination of information concerning EBCE and the issuance of public relations materials on this program.

Student Records and Administration

1. Development of selection criteria governing admittance of students to the EBCE program.
2. Maintenance of student records for the duration of time that the student is in the EBCE program in accordance with the Education Code of California.
3. Determination of credit to be granted OPS students toward their individualized programs of study as they enter from other schools under the OPS.

Other FWL Responsibilities

1. Meeting of health, fire and safety regulations as established by the Education Code of California.
2. Exercise of copyright privileges over instructional materials developed in the EBCE program in accordance with standard USOE regulations.

C. Oakland Public Schools will be responsible for the following:

1. Formal designation of EBCE as an experimental school or alternative school in the OPS system.
2. Designation of OPS representatives who will function as the primary contact and points of communication with EBCE management.
3. Designation of an OPS representative who will serve as a member of the EBCE Board.
4. Awarding of diplomas to students who complete their high school education through EBCE program.
5. Insuring that facilities used to house OPS students in the EBCE program meet state requirements for health, fire, and safety.

D. FWL and OPS will be jointly responsible for the following:

1. Selection of students to be admitted to the EBCE program from other schools of the OPS.
2. Determination of mandated requirements established by the Education Code of California, and the seeking of waivers as deemed necessary for establishment of the EBCE program.
3. Determination of student records to be maintained for students wishing to: (a) return to other high schools within the OPS: (b) have their EBCE educational experiences accepted toward a high school diploma to be awarded by the OPS; or (c) who wish to apply for college admission.
4. Acceptance of EBCE education as fully qualifying a student for graduation.

5. Allocation of course credit toward graduation as a result of EBCE experience.
6. Determination of sites where student experiences will occur in industry and in the community.
7. Differentiation and maintenance of separate identities of the EBCE program, the OPS Work-Study program and other OPS educational programs.
8. Provision of reciprocal opportunities for OPS and EBCE personnel to familiarize themselves with each other's educational programs.
9. Utilization by EBCE personnel of channels of communication established by OPS with public and private employers and with members of the local community.

E. The EBCE program will achieve the status of an experimental school.

F. This agreement begins with the date of its approval by the OPS.

G. This agreement may be amended at any time after such amendmendment has been negotiated and mutually agreed upon by the signatory parties.

This agreement may be dissolved unilaterally provided such dissollution has been negotiated by the signatory parties. In the event of dissolution, written notice will be provided 30 days in advance of the termination of this agreement.

SIGNATORIES:

Dr. John K. Hemphill Director of Far West Laboratory	Dr. Marcus A. Foster, Secretary Oakland Unified School District